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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 JENNY LISETTE FLORES; *et al.*, ) Case No. CV 85-4544  
)  
16 Plaintiffs, ) **DEFENDANTS’ NOTICE OF**  
) **MOTION TO TERMINATE**  
17 v. ) **SETTLEMENT AGREEMENT AND**  
) **TO DISSOLVE INJUNCTION OF**  
18 PAMELA BONDI, Attorney General ) **AGENCY REGULATIONS;**  
19 of the United States, *et al.*, ) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES**  
20 Defendants. )  
) Fed. R. Civ. P. 60(b)(4), (5) & (6)  
21 ) Hearing Date: July 18, 2025, 9:30 AM  
22 ) Place: Courtroom 8C, First Street  
) Courthouse  
23 ) Honorable Dolly M. Gee, District Judge

**NOTICE OF MOTION**

NOTICE IS HEREBY GIVEN that the U.S. Department of Justice (DOJ), the U.S. Department of Homeland Security (DHS), and the U.S. Department of Health and Human Services (HHS), by and through undersigned counsel, will bring this motion for hearing on July 18, 2025, at 9:30 a.m. or as soon thereafter as counsel may be heard, before United States Chief District Judge Dolly M. Gee, in Courtroom 8C, 8th Floor, at the Los Angeles – 1st Street courthouse located within the Central District of California.

**COMPLIANCE WITH LOCAL RULE 7-3**

This motion is made following a telephonic meeting of counsel pursuant to L.R. 7-3, and paragraph 37 of the Flores Settlement Agreement (FSA), which took place on May 13, 2025, and subsequent written correspondence. Plaintiffs oppose this motion. The parties agreed to a filing date of May 22, 2025, opposition on June 20, 2025, reply on July 3, 2025, and hearing on July 18, 2025.

**MOTION TO TERMINATE SETTLEMENT AGREEMENT; MOTION TO  
DISSOLVE INJUNCTION OF AGENCY REGULATIONS**

Defendants move to terminate the FSA under paragraph 40 of the FSA and Federal Rule of Civil Procedure 60(b)(4), (b)(5), and (b)(6). In light of the significant changes in circumstances since this Court entered the FSA 28 years ago, including the promulgation of regulations incorporating the goals of the FSA, and Supreme Court precedent that is inconsistent with continuing such a long-term decree, further continuation of the FSA is no longer equitable or in the public interest. The decree is also directly contrary to 8 U.S.C. § 1252(f)(1), as well as the Supreme Court's

1 decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022). Pursuant to Federal  
2 Rule of Civil Procedure 60(b)(4), (b)(5) and (b)(6), Defendants thus move to  
3 dissolve the FSA.

4 This motion is based upon the above Notice, the accompanying Memorandum  
5 of Points and Authorities, all pleadings and papers on file in this action, and such  
6 other matters as may be presented to this court at the time of the hearing on the  
7 motion. Pursuant to Local Rule 7-15, Defendants do not waive oral argument.

1 DATED: May 22, 2025

Respectfully submitted,

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           Defendants, in their official capacities, move to terminate the FSA completely  
3 and with respect to all Defendants, and to dissolve the Court’s injunction of DHS’s  
4 regulations for apprehension, processing, care, and custody of alien minors, ECF  
5 No. 690, as follows.

6                   **INTRODUCTION**

7           After 40 years of litigation and 28 years of judicial control over a critical  
8 element of U.S. immigration policy by one district court located more than 100 miles  
9 from any international border, it is time for this case to end.

10          Courts issuing injunctive relief in institutional-reform cases have a duty “to  
11 ensure that ‘responsibility for discharging the [government’s] obligations is returned  
12 promptly to the State and its officials’ when the circumstances warrant.” *Horne v.*  
13 *Flores*, 557 U.S. 433, 450 (2009) (citation omitted). “[T]he longer an injunction or  
14 consent decree stays in place, the greater the risk that it will improperly interfere  
15 with [government’s] democratic processes.” *Id.* at 453. Indeed, prolonged  
16 enforcement of consent decrees “may ‘improperly deprive future officials of their  
17 designated legislative and executive powers.’” *Id.* at 450 (citation omitted). The  
18 Supreme Court has thus admonished lower courts considering Rule 60 motions  
19 simply to ascertain whether ongoing enforcement of the original order “[i]s  
20 supported by an ongoing violation of federal law” and not to focus on compliance  
21 with “the original order.” *Id.* at 453-54.

22          These principles apply with even greater force to the federal government,  
23 especially to its enforcement of immigration laws: the Judiciary must not intrude

1 into the Executive's core foreign relations functions with indefinite oversight and  
2 micromanagement. *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

3 This case exemplifies the harms imposed by ongoing judicial management of  
4 Executive agencies. This Court entered the FSA as a consent decree in 1997 and  
5 amended it in December 2001. The FSA has governed the care and custody of  
6 unaccompanied alien children (UACs) ever since, notwithstanding intervening  
7 legislation by the U.S. Congress and agency regulations. In 2015, this Court  
8 expanded the FSA to *accompanied* children, *see Flores v. Lynch*, 828 F.3d 898, 906,  
9 909 (9th Cir. 2016), even though it is obvious from the FSA's terms that the parties  
10 did not contemplate their inclusion. Thus, as to accompanied children, the national  
11 policy has long been set by a district court (and not the President or Congress),  
12 notwithstanding that the consent decree providing the basis for district-court  
13 supervision does not claim to regulate this class of aliens. That simply cannot be.

14 During the 28 years that this Court has controlled federal policy regarding the  
15 custody of alien children who are in the United States without immigration status,  
16 enormous, cardinal changes have occurred: surges of aliens have entered the U.S. in  
17 between ports of entry across the southwest border, including large groups of aliens  
18 who voluntarily surrendered to Border Patrol—surrenders orchestrated by  
19 traffickers; the demographics of aliens arriving at the border have shifted to include  
20 significantly higher numbers from countries outside the Western Hemisphere and  
21 higher numbers of children; a global pandemic necessitated the government's  
22 utilization of its expulsion authority to protect public health; and the subsequent  
23 lifting of the policy led to an upheaval in immigration policy for over two years.



1 Moreover, the conditions for UACs—the original plaintiffs in this case—have  
2 substantially improved from those that precipitated this suit four decades ago. The  
3 parties reasonably could not have foreseen such developments, let alone the  
4 cumulative effect of such developments, in 1997.

5 The Executive has not been able to react fully and meaningfully to these  
6 changes because the FSA has ossified federal-immigration policy. Successive  
7 Administrations have tried unsuccessfully to free themselves from the strictures of  
8 the consent decree and this Court’s gloss on it. But detention of juvenile aliens  
9 continues to be—as it has been for more than a generation—dominated by the  
10 strictures of a 1997 agreement. This Court is obliged under *Horne* and other  
11 precedents to end this intrusive regime.

12 The legal and policy landscape has also changed beyond recognition.  
13 Plaintiffs claimed, in 1985, that the government’s alleged policy or practice to  
14 condition bail for UACs on the child’s parents or guardians appearing before an  
15 agent of the former Immigration and Naturalization Service (INS) violated due  
16 process and the Immigration and Nationality Act (INA). Plaintiffs cited the absence  
17 of established procedures for the conditions of custody or for reuniting children with  
18 parents or legal guardians. *See Reno v. Flores*, 507 U.S. 292, 295–96 (1993); *Flores*  
19 *v. Meese*, 934 F.2d 991, 995 (9th Cir. 1990), *rev’d Flores*, 507 U.S. at 292. In the  
20 FSA, the parties agreed to basic procedures addressing both matters. But since then,  
21 the legal basis for the agreement has withered away: Congress enacted legislation  
22 protecting UACs, and the agencies promulgated detailed standards and regulations  
23 implementing that legislation and the terms of the FSA.

1 The FSA itself has changed the immigration landscape by removing some of  
2 the disincentives for families to enter the U.S. unlawfully. Unlawful family  
3 migration barely existed in 1997. Since then, it has become widespread. U.S. Border  
4 Patrol reported a total of 614,020, 993,940, and 996,070 encounters with individuals  
5 in family units for FY2022, FY2023, and FY2024, respectively. Declaration of Marc  
6 Rosenblum, attached as Ex. B.

7 The numbers of UACs also increased during that time, with Border Patrol  
8 reporting 149,093 encounters with UACs on the Southwest border in FY2022,  
9 131,519 in FY2023, and 99,704 in FY2024. Declaration of John Modlin, attached as  
10 Ex. A, ¶ 8. In those hundreds of thousands of cases, adults and children made the ill-  
11 conceived decision to entrust their children or themselves to human traffickers and  
12 embark on a dangerous journey to the U.S. southern border, which is recognized as  
13 the “world’s deadliest migration land route.”<sup>1</sup> Such conduct, often with the  
14 expectation of a quick release into the United States and avoidance of immigration  
15 enforcement, is due in large part to the FSA, which has prevented the federal  
16 government from effectively detaining and removing families. The FSA—which  
17 was designed to address the much narrower issue of finding custodians and  
18  
19

---

20 <sup>1</sup> International Office of Migration, US-Mexico Border World’s Deadliest  
21 Migration Land Route (Sept. 12, 2023), available at [https://www.iom.int/news/us-](https://www.iom.int/news/us-mexico-border-worlds-deadliest-migration-land-route)  
22 [mexico-border-worlds-deadliest-migration-land-route](https://www.iom.int/news/us-mexico-border-worlds-deadliest-migration-land-route) (Sept. 12, 2023) (viewed Apr.  
23 7, 2025), attached as Ex. C. The loss of human life has been devastating, with 686  
deaths and disappearances of migrants on the U.S.-Mexico border in calendar year  
2022 alone, based on available—and incomplete—data. *Id.*

1 providing temporary care for UACs—removes the disincentives enacted by  
2 Congress to making this dangerous journey.

3 The law governing consent decrees cuts strongly against the FSA’s longevity.  
4 No reasonable basis exists for one court to oversee all children in the custody of  
5 DHS and HHS—a major driver of the immigration system for 28 years, and subject  
6 to the self-interested monitoring and motions filed by lawyers appointed over a  
7 generation ago. Over the past decade, the government has paid more than \$4.25  
8 million to class counsel, either in awards for attorney fees and costs or in settlements  
9 to obtain releases from attorney-fee claims arising out of litigation in this case.<sup>2</sup>  
10 Courts are obliged under *Horne* and other precedents to discontinue such a regime.

11 It is time for the era of the *Flores* consent decree to end. Through this Rule  
12 60(b) motion, Defendants seek to terminate the decree on multiple grounds, though  
13 any one alone would suffice. Relief is warranted under Rule 60(b) because: (1) under  
14 8 U.S.C. § 1252(f)(1) this Court lacked jurisdiction to enter a class-wide injunction  
15 as to DHS and, with the benefit of recent Supreme Court precedent, clearly lacks  
16 jurisdiction to enforce the FSA now; (2) events following the FSA, including an  
17 intervening Act of Congress and the implementation of *Flores* principles and  
18 policies, obviate the need for the FSA; (3) continued enforcement of the FSA  
19 violates the Constitution’s separation-of-powers principles by indefinitely  
20 entangling the Judiciary in the management of national-immigration policy; (4) the

---

21  
22 <sup>2</sup> These payments include \$540,000 to class counsel for a release from attorney-  
23 fee claims arising out of class counsel’s motion to enforce the FSA during the  
COVID-19 pandemic, ECF No. 1325, and \$577,000 for a release from attorney-fee  
claims arising out of a motion to enforce at emergency-intake sites, ECF No. 1340.

1 FSA's terms violate the Administrative Procedure Act (APA); and (5) the FSA is no  
2 longer equitable given the dramatic changes that have occurred since 1997, including  
3 the creation of detailed custodial systems, which did not exist in 1997, for UACs and  
4 families who entered the United States unlawfully. For these reasons, this Court  
5 should grant this motion and dissolve the FSA in its entirety.

## 6 **BACKGROUND**

### 7 ***The 1985 Complaint***

8 In 1984, in response to a huge uptick in illegal immigration and increased  
9 numbers of UACs, the former INS's Western Regional Office adopted an ad hoc  
10 policy permitting the release of detained minors—but only to their parents or lawful  
11 guardians, except in extraordinary cases when the juvenile could be released to  
12 individuals who agreed to care for the child's wellbeing. *See Flores*, 507 U.S. at 296.

13 On July 11, 1985, four plaintiffs, ages 13-16, who were citizens of El  
14 Salvador, in immigration custody, and unaccompanied by their parents or legal  
15 guardians, initiated this action. Compl. ¶¶ 12–15. They sought certification of a class  
16 defined as “all persons under the age of 18 who have been, are, or will be arrested  
17 and detained pursuant to [former] 8 U.S.C. 1252 by the INS within INS' Western  
18 Region and who have been, are, or will be denied release from INS custody because  
19 a parent or legal guardian fails to personally appear to take custody of them.” *Flores*,  
20 934 F.2d at 994–95.

21 The four plaintiffs alleged that they were required to share sleeping quarters  
22 with unrelated adults, provided no educational materials or recreational activities,  
23 received no medical examinations, and were denied reasonable visitation with

1 family and friends. Compl. ¶¶ 7, 42, 43, 45. Two plaintiffs alleged that their parent  
2 would not appear in person to accept physical custody of them because they feared  
3 being deported, and the third plaintiff alleged that her parents were in El Salvador,  
4 *id.* ¶¶ 28, 34, 40. The fourth plaintiff alleged that, after she met with her attorneys,  
5 INS agents strip-searched her. *Id.* ¶ 46. All four plaintiffs alleged that Defendants  
6 did not assess the qualifications of non-parent adults who were willing to take  
7 custody and care for them, and that, therefore, INS policy and practice was “a thinly  
8 veiled device to apprehend parents of incarcerated juveniles and to punish children  
9 for allegedly having entered the United States without lawful authority,” *id.* ¶¶ 6, 8.  
10 Plaintiffs claimed that conditioning bond on their parents’ or legal guardians’  
11 personal appearance violated their substantive-due-process right to be free from  
12 physical restraint, violated procedural due process by not requiring an individualized  
13 determination of the juvenile’s best interests, and exceeded the Attorney General’s  
14 authority under the former-immigration-detention statute, 8 U.S.C. § 1252 (repealed  
15 1996), which permitted the INS to release aliens on bond or conditional parole.

16 ***The 1988 Rule***

17 In October 1987, INS initiated a rulemaking to adopt procedures relating to  
18 detention and release of juvenile aliens. 52 Fed. Reg. 38,245 (Oct. 15, 1987). In  
19 November 1987, the parties entered into a Memorandum of Understanding (1987  
20 MOU) regarding detention conditions, under which minors in immigration custody  
21 for more than 72 hours would be housed in facilities that met or exceeded certain  
22 standards. *See* Memorandum of Understanding Re Compromise of Class Action:  
23

1 Conditions of Detention, *Flores v. Meese*, No. 85–4544–RJK (C.D Cal., Nov. 30,  
2 1987).

3 In May 1988, INS issued the rule, *Detention and Release of Juveniles*, 53 Fed.  
4 Reg. 17,449 (May 17, 1988) (the 1988 Rule). The 1988 Rule provided that alien  
5 juveniles generally “shall be released, in order of preference, to: (i) a parent; (ii) a  
6 legal guardian; or (iii) an adult relative (brother, sister, aunt, uncle, grandparent) who  
7 are not presently in INS detention.” 8 C.F.R. § 242.24(b)(1) (1992). If the only listed  
8 individuals were also in INS detention, INS would consider simultaneous release of  
9 the juvenile and custodian “on a discretionary case-by-case basis.” *Id.*  
10 § 242.24(b)(2). Under the rule, INS could hold minors in a detention facility  
11 designed for juveniles pending efforts to identify “suitable placement ... in a facility  
12 designated for the occupancy of juveniles.” *Id.* § 242.24(c).

13 For juveniles who were not released, the INS required a designated INS  
14 official, the “Juvenile Coordinator,” to locate “suitable placement ... in a facility  
15 designated for the occupancy of juveniles.” *Id.* § 242.24(c). INS could briefly hold  
16 the minor in any “INS detention facility having separate accommodations for  
17 juveniles,” *Id.* § 242.24(d), subject to the terms of the 1987 MOU.

18 ***The Supreme Court’s Remand in Reno v. Flores (1993).***

19 After this Court granted summary judgment in favor of Plaintiffs’ challenge  
20 to the 1988 Rule, the Supreme Court intervened, reversing the Ninth Circuit’s  
21 affirmance of this Court’s decision. *Flores*, 507 U.S. at 315. The Supreme Court  
22 rejected Plaintiffs’ substantive-due-process claim, noting that “‘juveniles, unlike  
23 adults, are always in some form of custody’ . . . , and where the custody of the parent

1 or legal guardian fails, the government may (indeed, we have said must) either  
2 exercise custody itself or appoint someone else to do so.” *Id.* at 302 (citation  
3 omitted). As to Plaintiffs’ procedural-due-process claim, the Supreme Court found  
4 the Constitution was satisfied by an INS process entitling alien juveniles to a hearing  
5 on detention before an immigration judge. *Id.* at 309. This Court likewise rejected  
6 Plaintiffs’ statutory-authority argument. *Id.* at 312.<sup>3</sup>

### 7 ***The 1997 Flores Settlement Agreement***

8 Though the Supreme Court rejected all of Plaintiffs’ claims, the parties agreed  
9 to a settlement on remand. The FSA became effective on January 28, 1997, upon  
10 this Court’s approval, and provides that “the court shall retain jurisdiction over this  
11 action.” FSA, attached as Ex. J, ¶ 35. When the parties signed the FSA, INS was  
12 responsible for arresting, processing, detaining or releasing, and removing aliens,  
13 including UACs.

14 The purpose of the FSA was to establish a “nationwide policy for the  
15 detention, release, and treatment of minors in the custody of the INS.” FSA ¶ 9. The  
16 parties expanded the settlement class beyond the Western Region, to cover “[a]ll  
17 minors who are detained in the legal custody of the INS.” *Id.* ¶ 10. A “minor” is  
18 defined as “any person under the age of eighteen (18) years who is detained in the  
19 legal custody of the INS,” but excludes minors who have been emancipated or  
20 incarcerated due to a criminal conviction as an adult. *Id.* ¶ 4. The detention of many

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21 <sup>3</sup> The 1988 Rule remains in effect today, although, in 1997, INS moved it to  
22 8 C.F.R. § 236.3. *See* 62 Fed. Reg. 10,312, 10,360 (Mar. 6, 1997). In 2002, INS  
23 transferred relevant authority to the Director of the Office of Juvenile Affairs. *See*  
67 Fed. Reg. 39,255, 39,258 (June 7, 2002).

1 alien minors occurred under what was, at the time, the discretionary-detention  
2 statute. *See Flores*, 507 U.S. at 309.

3 The FSA’s terms reflect that the parties intended it to be a stopgap measure  
4 until Defendants promulgated regulations governing the care and custody of UACs.  
5 *See K.O. by & through E.O. v. United States*, 651 F. Supp. 3d 331, 338 (D. Mass.  
6 2023) (observing that the FSA was intended to be a stopgap measure); *Bunikyte, ex*  
7 *rel. Bunikiene v. Chertoff*, No. A-07-CA-164-SS, 2007 WL 1074070, at \*2 (W.D.  
8 Tex. Apr. 9, 2007) (same). The FSA was originally set to expire within five years,  
9 but, in December 2001, this Court entered the parties’ stipulation to amend the  
10 termination date to “45 days following defendants’ publication of final regulations  
11 implementing this Agreement.” ECF No. 13.

12 ***Significant Changes in Circumstances Since 1997***

13 Since the FSA was entered in 1997, the United States’ public-policy interests  
14 have shifted. Events such as the September 11, 2001 terrorist attacks, and the growth  
15 of national-security threats such as drug trafficking and human smuggling by  
16 transnational criminal organizations, have necessitated policy responses that could  
17 not have been reasonably contemplated in 1997.

18 In 2002, Congress abolished INS and transferred its functions to the newly  
19 created DHS. *See* Homeland Security Act (HSA), Pub. L. No. 107–296, §§ 441, 451,  
20 471, 116 Stat. 2135, 2205, 2308 (Nov. 25, 2002) (6 U.S.C. §§ 251, 271, 291, 542).  
21 With respect to the care of UACs, Congress transferred responsibility from the INS’s  
22 UAC program to the Office of Refugee Resettlement (ORR) within HHS. 6 U.S.C.



1 § 279.<sup>4</sup> ORR became responsible for coordinating and implementing the care and  
2 placement of UACs, making and implementing placement determinations,  
3 overseeing the infrastructure and personnel of UAC facilities, and other functions. 6  
4 U.S.C. § 279(b).

5 In the wake of 9/11, DHS ended the practice of “catch-and-release.”<sup>5</sup>  
6 Previously, families apprehended at the border generally were released rather than  
7 detained because of limited bed space. *Bunikyte*, 2007 WL 1074070, at \*1 (citation  
8 omitted). The catch-and-release practice created enforcement vulnerabilities,  
9 namely that smugglers reportedly brought children across the border with groups of  
10 smuggled strangers and presented them as family units, in order to avoid detention  
11 if apprehended. Ex. C ¶ 7. Catch-and-release also incentivized families to bring  
12 children on a dangerous journey. *Id.* To maintain family unity, ICE opened family  
13 residential centers (FRCs). *Id.* ¶¶ 8, 9. At the time, ICE used the 2000 INS Detention  
14 Standards, blended with traditional juvenile standards, to establish a baseline of  
15 performance requirements and oversight procedures for FRCs. *Id.* ¶ 15.

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17  
18 <sup>4</sup> ORR is a program of the Administration for Children and Families (ACF) that  
19 was created with the enactment of the Refugee Act, Pub. L. No. 96-212, 94 Stat. 102  
(Mar. 17, 1980).

20 <sup>5</sup> Declaration of Timothy L. Perry, Deputy Assistant Director, Detention  
21 Management Division, Office of Detention and Removal Operations, ICE (Mar. 16,  
22 2007), *Bunikyte*, No. A-07-CA-164-SS (W.D. Tex.), ECF No. 17-1, attached as  
23 Exhibit C ¶ 6. Under the catch-and-release policy, the government issued aliens  
apprehended at or near the border notices to appear in removal proceedings and  
released them on their own recognizance or bail. *Id.*

1 In the meantime, the numbers of alien minors arriving in the United States  
2 each year increased significantly. While the numbers fluctuate from year to year,  
3 they remain significantly higher than the approximately 7,000 to 8,000 entering each  
4 year in the early 1990s. *See Flores*, 507 U.S. at 294 (recognizing that a surge of  
5 “more than 8,500” alien minors represented a “serious” problem). From FY1993  
6 until FY2011, the numbers of UACs apprehended by the government stayed  
7 relatively consistent year-over-year. Declaration of Toby Biswas, attached as Ex. D  
8 ¶ 4. In FY2012, DHS referred 13,625 UACs to ORR. *Id.* In FY2023, ORR received  
9 118,938 referrals—a thirteenfold increase from the time the FSA was entered. *Id.*

10 The need to “hous[e] family units,” which was not contemplated by the parties  
11 in 1997, *see Flores*, 828 F.3d at 906, became a significant issue. U.S. Customs and  
12 Border Protection (CBP) reported 14,855 Border Patrol encounters of individuals in  
13 family units (FAMUs) along the Southwest border in FY2013. Ex. A ¶ 8. CBP  
14 reported 614,020 Border Patrol encounters with individuals in family units in  
15 FY2022, 993,940 individuals in family units in FY2023, and 996,070 in FY2024.  
16 Ex. B.

17 More recently, the numbers of encounters along the border have decreased,  
18 but they remain higher than they were in the early 1990s. In the first six months of  
19 FY2025, Border Patrol reported 22,662 encounters with UACs and 50,662 with  
20 individuals in FAMUs along the Southwest border. Ex. A, ¶ 8. Even with stronger  
21 enforcement and significantly fewer unlawful entries, however, the FSA continues  
22 to frustrate CBP’s ability to carry out its mission of protecting the border. *See id.*,  
23 ¶ 18. Stronger enforcement has required Border Patrol to keep people in custody

1 longer. [cite] Increases in encounters and the numbers of UACs and FAMUs in  
2 custody are difficult to plan for because the increases are neither steady nor  
3 predictable. *See generally* Ex. A.

4 Since 1997, Congress and the agencies enacted protections for UACs in  
5 government custody. DHS must notify HHS within 48 hours of the apprehension or  
6 discovery of a UAC and transfer them to HHS's custody within 72 hours, absent  
7 exceptional circumstances and except when a UAC from a contiguous country is  
8 permitted to withdraw his or her application for admission. *See* William Wilberforce  
9 Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No.  
10 110-457 § 235, 122 Stat. 5044, 5074 (Dec. 23, 2008) (8 U.S.C. § 1232(b)(2), (3)).  
11 Further, UACs in HHS custody must be promptly placed in the least restrictive  
12 setting that is in the child's best interest, and, if placed in a secure facility, the  
13 placement shall be reviewed monthly. 8 U.S.C. § 1232(c)(2)(A). Other provisions  
14 govern legal-orientation presentations and access to counsel. *Id.* § 1232(c)(4) & (5).

15 In 2014, pursuant to the Prison Rape Elimination Act (PREA), DHS issued  
16 regulations to prevent, detect, and respond to sexual abuse and assault in DHS  
17 confinement facilities.<sup>6</sup> *See* 79 Fed. Reg. 13,100 (Mar. 7, 2014) (6 C.F.R. § 115.10-  
18 95 (detention facilities), *id.* § 115.110-195 (holding facilities)). Under DHS's PREA  
19 regulations, juveniles must be detained in the least restrictive setting appropriate to  
20 the juvenile's age and special needs, and facilities must hold juveniles apart from  
21 adult detainees, unless the juvenile is in the presence of an adult family member, and

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22  
23 <sup>6</sup> Congress enacted PREA in 2003. *See* Pub. L. No. 108-79, 117 Stat. 972 (Sept.  
4, 2003), codified at 34 U.S.C. § 30301, *et seq.*

1 provided the arrangement presents no safety or security concerns. 6 C.F.R. §§  
2 115.14(a), (b) (detention), 115.114(a)(b) (holding). Further, each facility must  
3 supervise detainees through appropriate staffing levels and, where applicable, video  
4 monitoring to protect detainees against sexual abuse, and must develop and  
5 document comprehensive-supervision guidelines. 6 C.F.R. § 115.13, 115.113. ORR  
6 issued similar regulations with respect to UACs in its custody. *See* 79 Fed. Reg.  
7 77,768 (Dec. 24, 2014), codified at 45 C.F.R. pt. 411.

8 In October 2015, CBP issued its Transport, Escort, and Detention Standards  
9 (TEDS), implementing a CBP-wide policy setting nationwide standards to govern  
10 CBP's interaction with detained individuals. *See* TEDS, Ex. F. Under the TEDS  
11 policy, detainees generally should not be held for more than 72 hours in a CBP  
12 facility. *Id.* § 4.1. TEDS establishes national standards for medical screening, gender  
13 separation, segregation of juveniles from adult populations (unless the adult is an  
14 immediate relative or legal guardian), and family unity. *Id.* § 4.3. It also establishes  
15 standards for detainee privacy, hold-room conditions, consular access, lists of legal-  
16 services providers, telephone access, bedding, hygiene, and access to food, water,  
17 and restrooms. *Id.* §§ 4.6-4.15.

18 In 2020, ICE updated its standards governing FRCs, the Family Residential  
19 Standards (FRS), which likewise set the standards for the care and custody of  
20 FAMUs and juveniles. *See* Declaration of Dawnisha Helland, attached as Ex. G;  
21 FRS, attached as Ex. H.

22 In January 2025, President Trump signed the Laken Riley Act into law. Pub.  
23 L. 119-1, 139 Stat. 3 (2025). It expanded the category of aliens who are subject to

1 mandatory detention. *Id.* Most importantly, States can now sue for injunctive relief  
2 if a decisions by DHS harms the State or its residents, which adds pressure on DHS  
3 to end catch-and-release and ensure compliance with the mandatory-detention  
4 provisions required under the INA.

### 5 ***Flores Litigation Related to DHS***

6 Since 1997, there has been significant litigation over the FSA’s terms, most  
7 of which arose from class counsel’s fifteen motions to enforce the FSA. Below are  
8 examples of the litigation that has occurred in the past decade.

- 9 • *Flores v. Johnson*, 212 F. Supp. 3d 864 (C.D. Cal. 2015) (granting Plaintiffs’  
10 Motion to Enforce, ECF No. 100, and ruling that the FSA applies to all alien  
11 minors in government custody, including those in FAMUs);
- 12 • *Flores*, 828 F.3d. at 902–903 (upholding this Court’s conclusion that the FSA  
13 applies to accompanied-alien minors and that during an emergency or influx,  
14 minors must be transferred “as expeditiously as possible” to a non-secure,  
15 licensed facility);
- 16 • *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1063-67 (C.D. Cal. 2017)  
17 (interpreting the FSA to require ICE to make and record continuous efforts to  
18 release accompanied minors in expedited-removal proceedings—even though  
19 such minors are subject to mandatory detention under  
20 8 U.S.C. § 1225(b)(1)(B)(ii) or (iii)(IV). This Court also concluded that  
21 Defendants must assess each individual class member in expedited-removal  
22 proceedings for discretionary, humanitarian parole);

- 1 • *Flores v. Barr*, 407 F. Supp. 3d 909, 916–20 (C.D. Cal. 2019) (permanently  
2 enjoining DHS’s and HHS’s the 2019 Rule implementing the FSA<sup>7</sup> because  
3 this Court found that the provisions related to the detention of UACs and the  
4 licensing of family-detention facilities were inconsistent with the FSA), *aff’d*  
5 *in part, rev’d in part*, *Flores v. Rosen*, 984 F.3d 720, 737 (9th Cir. 2020)  
6 (upholding permanent injunction of the 2019 Rule applicable to the care and  
7 custody of accompanied minors, based upon its conclusions that the  
8 regulations differed substantially from the FSA, but reversing and remanding  
9 this Court’s decision as to most of the provisions related to Border Patrol  
10 custody and UACs, because those provisions were consistent with the FSA);  
11 • ECF No. 1406 at 11 (granting in part Plaintiffs’ Motion to Enforce, ECF No.  
12 1392, based on its finding that alien juveniles waiting in Outdoor  
13 Congregation Areas (OCAs)—plots of land along the U.S.-Mexico border that  
14 are not controlled or owned by CBP—are detained in CBP custody, and  
15 ordering CBP to cease “holding” alien children in these sites, and monitor  
16  
17  
18

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19 <sup>7</sup> On August 23, 2019, DHS and HHS published final regulations to implement  
20 the FSA. *See* 84 Fed. Reg. 44,392–535 (Aug. 23, 2019) (2019 Rule). The 2019 Rule  
21 included two sets of regulations: one issued by DHS and the other by HHS. *Id.* at  
22 44,515-30 (DHS); *id.* at 44,530-35 (HHS). The DHS regulations govern the  
23 apprehension and processing of unaccompanied and accompanied minors, and the  
care and custody of accompanied minors. The HHS regulations governed the care  
and custody of UACs.

1 compliance with the FSA with respect to any alien juveniles present at  
2 OCAs).<sup>8</sup>

3 ***Resumption of Operations in FRCs***

4 In March 2025, ICE resumed the operation of FRCs to house family units, for  
5 the purpose of increasing compliance with immigration obligations, reducing the  
6 number of absconders, and housing members of the same family together. *See* Ex.  
7 G ¶¶ 13-15. Without FRCs, ICE's ability to monitor immigration cases and execute  
8 removal orders is compromised.<sup>9</sup> *Id.* ¶¶ 15-28. FRCs provide a safe setting for family  
9 units awaiting removal together while advancing the public-policy interests in  
10 reducing the number of absconders and enabling ICE to better manage its resources.  
11 *Id.* ¶¶ 19, 20, 23.

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13 <sup>8</sup> Beginning in October 2022, large groups of aliens began to enter the United  
14 States through Mexico, and congregate in the areas east of the San Ysidro Port of  
15 Entry, known as OCAs, including remote areas that are not reachable by bus or car  
16 and lack basic amenities, like shade and drinking water. Ex. A ¶ 18. There, the aliens  
17 waited until Border Patrol agents could arrive. *See* ECF No. 1406 at 1-3. The groups  
18 consisted of dozens to hundreds of aliens, often believed to be assisted by cartel-  
affiliated smuggling organizations. ECF No. 1398-1 ¶ 7. The OCAs were neither  
established nor maintained by CBP. ECF No. 1479-1 ¶ 6.

19 <sup>9</sup> The most reliable factor for determining whether an alien is removed when a  
20 final order is issued is whether the alien is in detention when this occurs. 84 Fed.  
21 Reg. at 44,488. In many cases when an alien was at large when a final order of  
removal was issued, ICE expended significant resources to locate, detain, and  
subsequently remove the alien in accordance with the final order. *Id.*

22 According to ICE data, family units on ATD tend to abscond at a higher rate  
23 than non-family unit participants. *Id.* (noting that the absconder rate for FAMUs was  
30 percent, while the absconder rate for non-FAMUs was 19 percent).

***This Court’s Retention of Jurisdiction over ORR’s Implementation of the  
FSA at Secure, Heightened Supervision, and Out-of-Network Facilities***

On April 30, 2024, HHS issued a rule governing the placement, care and custody of UACs. *Unaccompanied Children Foundational Rule*, 89 Fed. Reg. 34, 384 (Apr. 30, 2024) (Foundational Rule). Defendants moved to terminate the FSA as to HHS, under Rule 60(b)(5), based on the Foundational Rule. ECF No. 1414. On June 28, 2024, this Court conditionally and partially terminated the FSA as to HHS, except for FSA ¶¶ 28.A, 32, and 33, which concern collection of certain information about UACs, attorney-client visits, and site visits, and as to the FSA provisions governing secure, heightened supervision, and out-of-network facilities. ECF No. 1447. This Court also held that termination was contingent on the Foundational Rule not being subsequently rescinded or modified inconsistent with the FSA, and retained jurisdiction to modify its order, “should further changed circumstances make it appropriate.” *Id.* at 21.

With respect to UAC placements at secure, heightened supervision, and out-of-network facilities, the Court ruled that the Foundational Rule failed to implement the FSA by: (1) “appear[ing] to impermissibly allow isolated or petty offenses to be considered in the decision to place [UACs] in a heightened supervision facility”; (2) “appear[ing], impermissibly, to allow placement in a heightened supervision facility solely because a child is ready to ‘step down’ from a secure facility”; and (3) “fail[ing] to provide substantive protections for the children placed at [out-of-network] facilities,” and failing to ensure that out-of-network placements are governed by the same standards as those in network providers. *Id.* at 12-13. As to



1 Defendants' argument that the parties did not contemplate out-of-network facilities  
2 in the FSA, this Court concluded that out-of-network facilities have "typically" been  
3 considered a form of secure placement, and did not consider that any out-of-network  
4 facility must be State licensed. *See* 45 C.F.R. § 410.1001.

### 5 ***2025 ORR Policy Guidance***

6 On May 19, 2025, HHS promulgated policy guidance in response to this  
7 Court's concerns in its Order Partially Terminating the FSA as to HHS, ECF No.  
8 1447. Ex. D ¶¶ 5-17. Although ORR has been implementing the Foundational Rule  
9 in accordance with this Court's June 28, 2024 order, these updates explicitly  
10 establish that it is doing so through formal guidance. First, ORR revised the UAC  
11 Policy Guide to delete references to isolated and petty offenses as a basis for  
12 placement in a heightened-supervision facility. Ex. D ¶ 7. Second, ORR updated its  
13 UAC Policy Guide to remove a provision that previously listed the step-down of  
14 children from a secure placement to a heightened-supervision facility as a possible  
15 justification alone for placement. *See id.* ¶¶ 8-9. Third, ORR clarified that the same  
16 standards that apply to in-network providers will generally apply to out-of-network  
17 placements. *See id.* ¶¶ 10-18; Policy Guide § 3.3. The UAC Policy Guide update  
18 also clarifies that behavior-management policies, as described in the Foundational  
19 Rule and Policy Guide, will apply to out-of-network placements. Ex. D ¶ 13.

### 20 **LEGAL STANDARDS**

21 "Pursuant to Rule 60(b)(4), a litigant may attack a judgment as void due to  
22 lack of subject matter jurisdiction." *Wages v. IRS*, 915 F.2d 1230, 1234 (9th Cir.  
23 1990).

1 Rule 60(b)(5) provides that a court “may relieve a party ... from a final  
2 judgment, order, or proceeding” when “the judgment has been satisfied, released, or  
3 discharged” or when “applying it prospectively is no longer equitable.” Fed. R. Civ.  
4 P. 60(b)(5). The Supreme Court has explained that the disjunctive language of Rule  
5 60(b)(5) clarifies that each of these grounds for relief is “independently sufficient.”  
6 *Horne*, 557 U.S. at 454. Under the first clause of Rule 60(b)(5), relief from judgment  
7 is appropriate when a judgment has been satisfied according to its own provisions.

8 In contrast, the “equitable” clause of Rule 60(b)(5) allows a court to modify  
9 or vacate an order if “a significant change either in factual conditions or in law  
10 renders continued enforcement detrimental to the public interest.” *Id.* at 447 (cleaned  
11 up). Where the government seeks relief from an “institutional-reform” decree, courts  
12 must apply a “flexible approach” to “ensure that responsibility for discharging the  
13 [government’s] obligations is returned promptly to the [government] and its officials  
14 when the circumstances warrant.” *Id.* at 448–50 (internal quotation marks and  
15 citation omitted). A flexible approach is necessary for several reasons. First, “the  
16 passage of time frequently brings about changed circumstances—changes in the  
17 nature of the underlying problem, changes in governing law or its interpretation by  
18 the courts, and new policy insights—that warrant reexamination of the original  
19 judgment.” *Id.* at 447–48. Second, these types of decrees often involve core-  
20 government responsibilities and raise separation-of-powers concerns. *Id.* at 448.  
21 Last, “public officials sometimes consent to, or refrain from vigorously opposing,  
22 decrees that go well beyond what is required by federal law.” *Id.* Future officials  
23

1 then “inherit overbroad or outdated consent decrees” that unduly constrain “their  
2 ability to fulfill their duties as democratically-elected officials.” *Id.* at 449.

3 When determining whether to vacate an injunction under Rule 60(b)(5), courts  
4 must also consider “whether ongoing enforcement of the original order [is]  
5 supported by an ongoing violation of federal law.” *Id.* at 454. Further, if the  
6 government has implemented a “durable remedy,” judicial oversight should cease.  
7 *Id.* at 450. Rule 60(b)(5) also permits modification of a decree if it is “suitably  
8 tailored” to resolve problems created by changed circumstances. *Rufo v. Inmates of*  
9 *Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992).<sup>10</sup> Once a party carries its burden to  
10 show that changed circumstances warrant relief from a consent decree, “a court  
11 abuses its discretion when it refuses to modify an injunction or consent decree in  
12 light of such changes.” *Horne*, 557 U.S. at 447 (internal quotations and citation  
13 omitted).

14 Rule 60(b)(6) permits relief from judgment for “any other reason that justifies  
15 relief.” Fed. R. Civ. P. 60(b)(6). It permits the district court to vacate judgments  
16 “whenever such action is appropriate to accomplish justice.” *Henson v. Fid. Nat’l*  
17 *Fin., Inc.*, 943 F.3d 434, 443–44 (9th Cir. 2019) (internal quotations and citation  
18 omitted). Relief under the rule is available only in “extraordinary circumstances.”

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19  
20 <sup>10</sup> “To the extent *Rufo* and *Horne* differ as to the appropriate course of action  
21 when a party seeks a Rule 60(b)(5) modification to an order in an institutional reform  
22 case,” the Court should follow *Horne* because Defendants seek the FSA’s  
23 termination, not a partial modification, and because “*Horne* is the latest ruling in a  
trend of decisions that lower the threshold for defendants to obtain a modification  
to, or the dissolution of, orders in long-lasting institutional reform cases.” *Jackson*  
*v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1199–1201 (10th Cir. 2018).

1 *Buck v. Davis*, 580 U.S. 100, 123 (2017). But “[i]n determining whether  
2 extraordinary circumstances are present, a court may consider a wide range of  
3 factors,” such as “the risk of injustice to the parties and the risk of undermining the  
4 public’s confidence in the judicial process.” *Id.* at 123 (internal quotations and  
5 citation omitted).

## 6 ARGUMENT

### 7 **I. Dissolving the FSA as to DHS and Vacating the Permanent Injunction as** 8 **to the 2019 DHS Rule Are Required under § 1252(f) and the Supreme** 9 **Court’s Decision in *Aleman Gonzalez*.**

10 This Court must dissolve the FSA as to DHS and lift its injunction enjoining  
11 the 2019 DHS Rule because this Court lacked jurisdiction to enjoin the 2019 Rule  
12 or enter the FSA in the first place with respect to the former INS, and ICE and CBP  
13 as its successors, under 8 U.S.C. § 1252(f)(1). The Supreme Court’s decision in  
14 *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022) has resolved any doubt that  
15 § 1252(f)(1) divested courts of jurisdiction to restrain the operation of the  
16 immigration-detention provisions in the INA. Relief is thus warranted under Rule  
17 60(b)(4) because the injunction is void for lack of jurisdiction and under Rule  
18 60(b)(5) due to a change in decisional law. Indeed, “[a] court errs [under Rule  
19 60(b)(5)] when it refuses to modify an injunction or consent decree in light of”  
20 “changes in either statutory or decisional law.” *Agostini v. Felton*, 521 U.S. 203, 215  
21 (1997).

22 Section § 1252(f)(1) divests lower federal courts of authority to enjoin or  
23 restrain the operation of the detention provisions of the INA. In 2022, the Supreme

1 Court held that “§ 1252(f)(1) generally prohibits lower courts from entering  
2 injunctions that order federal officials to take or to refrain from taking actions to  
3 enforce, implement, or otherwise carry out the specified statutory provisions.”  
4 *Aleman Gonzalez*, 596 U.S. at 548–50. The Court also explained that “injunctive  
5 relief on behalf of an entire class of aliens” enjoining or restraining the operation of  
6 the INA’s detention provisions “is not allowed[.]” *Id.* at 550–51 (holding that a class-  
7 wide injunction requiring the Government to provide bond hearings for class  
8 members detained under 8 U.S.C. § 1231(a)(6) were “barred” because they  
9 “interfere with the Government’s efforts to operate § 1231(a)(6)[.]”). That holding  
10 clarifies that the FSA and this Court’s 2019 injunction were inappropriate exercises  
11 of jurisdiction.

12 Section 1252(f)(1) codifies section 242(f)(1) of the INA, which refers to “the  
13 provisions of chapter 4 of title II” of the INA (as amended by IIRIRA), *i.e.*, sections  
14 231 through 244 of the INA, 8 U.S.C. §§ 1221–1231 and 1252–1254a. *Galvez v.*  
15 *Jaddou*, 52 F.4th 821, 830 (9th Cir. 2022). These sections include the sources of  
16 DHS’s authority to detain class members, which are in §§ 1225(b)(1)(B)(ii),  
17 1225(b)(1)(B)(iii)(IV), 1225(b)(2)(A), 1226, and 1231(a). The applicable detention  
18 authority depends upon the status of the alien’s immigration proceedings and the  
19 alien’s criminal history.

20 Specifically, aliens in expedited-removal proceedings “shall be detained  
21 pending a final determination of credible fear of persecution and, if found not to  
22 have such a fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Likewise,  
23 inadmissible aliens seeking admission “shall be detained for a proceeding under

1 section 1229a.” *Id.* § 1225(b)(2)(A). Outside of expedited-removal proceedings, the  
2 Government has discretion to detain or release an alien on bond pending a decision  
3 on whether he or she is to be removed, *id.* § 1226(a), unless detention is mandatory  
4 under § 1226(c) due to certain criminal offenses.

5 Because the detention of class members by ICE and CBP is pursuant to  
6 provisions governed by § 1252(f)(1), *Aleman Gonzalez* makes plain that this Court  
7 lacked jurisdiction to enter the FSA. *See Florida v. United States*, 660 F. Supp. 3d  
8 1239, 1267 (N.D. Fla 2023) (recognizing that *Flores* may be causing violations of  
9 § 1225(b) and chastising the government for failing to move for relief in this Court  
10 under *Aleman Gonzalez*). The same is true of this Court’s permanent injunction of  
11 DHS’s 2019 regulations, which DHS issued pursuant to sections of the INA that  
12 govern immigration custody. This Court has not previously wrestled with *Aleman*  
13 *Gonzalez* and did not have the benefit of the Supreme Court’s clarification on the  
14 scope of § 1252(f)(1) when it approved the FSA in 1997 or permanently enjoined  
15 the 2019 DHS rule. But it must do so now given that courts must account for  
16 “changes in either statutory or decisional law,” *Agostini*, 521 U.S. at 215, especially  
17 where the changes establish that the court lacks jurisdiction. Under *Aleman*  
18 *Gonzalez*’s construction of § 1252(f)(1), this Court must dissolve the FSA as to ICE  
19 and CBP and the 2019 injunction of DHS’s Rule. Fed. R. Civ. P. 60(b)(4)-(5).

**II. This Court Should Dissolve the Consent Decree Because Its Terms Have Been Substantially Satisfied as to HHS and DHS.**

**A. HHS’s Recent Policy Guidance Makes Plain that It Has Satisfied the Conditions of the FSA.**

HHS’s policy guidance establishes that it is implementing the Foundational Rule in accordance with this Court’s concerns as to placement of UACs in secure, heightened supervision, and out-of-network facilities, as articulated in this Court’s June 28, 2024 order. ECF No. 1447.

Specifically, this Court concluded that the Foundational Rule was inconsistent with the FSA in that it allowed ORR to consider isolated or petty offenses when placing a UAC in a heightened-supervision facility. *Id.* at 12. ORR has now clarified that isolated and petty offenses are not a basis for such placement. *See* Ex. D-3 - UAC Policy Guide § 1.2.4. ORR further clarified that it will consider whether the child “has a non-violent criminal or delinquent history not warranting placement in a secure facility but which evidences a behavioral concern that requires an increase in supervision” when determining whether to place a UAC in such a facility. Ex. D ¶ 7.

HHS also has responded to this Court’s conclusion that HHS appeared to allow placement in a heightened-supervision facility “solely because a child is ready to ‘step-down’ from a secure facility.” ECF No. 1447 at 12. ORR has foreclosed such an interpretation in its updated policy guidance by removing the provision at issue. *See* Ex. D ¶ 8.

1        ORR also addressed this Court’s conclusion that the Foundational Rule  
2 “fail[ed] to provide substantive protections for the children placed” at out-of-  
3 network facilities and to ensure that out-of-network placements are governed by the  
4 same standards as in-network providers, ECF No. 1447 at 13. In response, ORR has  
5 updated its Policy Guide to explicitly establish that it applies the same standards to  
6 out-of-network placements that apply to in-network placements, taking into account  
7 the specialized nature of out-of-network facilities and ORR’s single-case agreements  
8 with such facilities for individual children. In particular, ORR updated its UAC  
9 Policy Guide § 1.4.6 and the definition of an OON to make clear that, wherever  
10 possible, the same standards applicable to in-network providers apply to out-of-  
11 network placements. *See* Ex. D ¶¶ 10-18.

12        Because the new policy guidance eliminates any basis for concluding that the  
13 Foundational Rule does not satisfy the FSA, this Court must dissolve the FSA as to  
14 HHS. Fed. R. Civ. P. 60(b)(5).

15        **B.    DHS Has Substantially Satisfied the Terms of the FSA.**

16        Termination is likewise necessary as to DHS because DHS has substantially  
17 satisfied the terms of the FSA. As this Court has recognized, termination of the FSA  
18 is appropriate “so long as the requisite legal standards for termination are met.” ECF  
19 No. 1447 at 16 (terminating portions of the FSA as to HHS). As the parties stipulated  
20 in 2001, the terminates automatically “45 days following defendants’ publication of  
21 final regulations implementing this Agreement.” Ex. J.

22        In the context of institutional-reform litigation, the Supreme Court has  
23 criticized lower courts for focusing too narrowly on the terms of the consent decree



1 rather than the broader question, “whether, as a result of important changes during  
2 the intervening years, the [government] was fulfilling its obligations under the [law]  
3 by other means.” *Horne*, 557 U.S. at 439. Indeed, the *Horne* Court recognized that  
4 it “was error” for the lower courts to not consider that a government may fulfill the  
5 principal goals of the underlying decree, “even without having satisfied the  
6 [verbatim terms of the] original order.” *Id.* at 466. So too here.

7       This Court should terminate the FSA with respect to DHS in light of DHS’s  
8 2019 regulations, which are the latest in decades of efforts aimed at the original goal  
9 of the FSA: to create a comprehensive scheme to protect alien juveniles in U.S.  
10 custody. *See, e.g., Flores v. Huppenthal*, 789 F.3d 994, 1001 (9th Cir. 2015)  
11 (observing that the critical question in that case was whether the objective of the  
12 district court’s order—satisfaction of the underlying federal law—had been  
13 achieved); *United States v. City of Miami*, 2 F.3d 1497, 1505 (11th Cir. 1993) (“A  
14 court faced with a motion to terminate . . . a consent decree must begin by  
15 determining the basic purposes of the decree.”). Further, continued enforcement of  
16 the FSA instead of the policies of the people’s representatives is not in the public  
17 interest because continued enforcement interferes with the Executive Branch’s  
18 authority to enforce the immigration laws. *See infra* Section III.A.

19       The conditions of confinement today are far from the conditions that prevailed  
20 in the original litigation. Today, there is a routine policy of minimizing the “practice  
21 of commingling harmless children with adults of the opposite sex,” *Flores*, 507 U.S.  
22 at 328 (Stevens, J. dissenting) (citing evidence from the 1980s about conditions of  
23 confinement in INS custody), and the law provides protective and safe custody for

1 minors in either DHS or HHS custody, *see* 6 U.S.C. § 279; 8 U.S.C. § 1232;  
2 6 C.F.R. §§ 115.10–.195; 8 C.F.R. §§ 236.3; 45 C.F.R. pts. 410, 411. More  
3 specifically, under the regulations governing ICE custody, FRCs provide children  
4 with the very “education, recreation, [and] visitation” provisions that were lacking  
5 when the Supreme Court initially heard this case. *Flores*, 507 U.S. at 328; *see* 8  
6 C.F.R. § 236.3(i)(4)(iv) (education); § 236.3(i)(4)(vi) (recreation time);  
7 § 236.3(i)(4)(xi), (xii), (xiii), and (xv) (visitation); *see also* Ex. H, FRS § 5.2 (setting  
8 forth requirements to ensure that FRCs provide education for all residents 4 to 17  
9 years of age, regardless of English proficiency or disability).

10 Beyond resolving the concerns that instigated this lawsuit, the DHS  
11 regulations generally incorporate the portions of the FSA that the parties  
12 contemplated in 1997 and should go into effect. Previously, this Court deemed only  
13 two of the DHS provisions to be inconsistent with the FSA: the provisions related to  
14 “expeditious release” of accompanied minors (FSA ¶¶ 14, 18); and the licensing  
15 requirements for FRCs (FSA ¶ 19). *Flores*, 407 F. Supp. 3d at 916–20, *aff’d in part*,  
16 *rev’d in part* 984 F.3d 720. This Court did not find that any of the other DHS  
17 regulatory provisions were inconsistent with the FSA. *See generally id.* While the  
18 DHS regulations do not mirror the expeditious-release provision of the FSA, as this  
19 Court has interpreted it to apply to accompanied children, the FSA was intended to  
20 provide for prompt release of UACs to a parent or caregiver. The law surrounding  
21 the treatment of UACs has changed entirely to address this central concern of the  
22 FSA, evidenced by Congress’s definition of UACs, 6 U.S.C. § 279(g)(2), and  
23 mandates for protecting UACs, including 8 U.S.C. § 1232. DHS should not remain

1 subject to the FSA based on this Court's conclusion that DHS's regulations  
2 governing the custody of accompanied children do not mirror an agreement that was  
3 never designed to cover that population.

4 Further, incorporating the FSA's expeditious-release provisions for  
5 accompanied children would contravene current federal statutes. *Rufo*, 502 U.S. at  
6 384 (courts should modify a decree due to a "significant change . . . in law."). On  
7 April 1, 1997, two months *after* the parties agreed to the FSA, the mandatory-  
8 detention provisions in §§ 1225(b) and 1226(c) went into effect. *See supra* Section  
9 I. These provisions were a stark change from the detention statute in place during  
10 the initial *Flores* litigation, negotiations, and the signing of the FSA, as the previous  
11 statute permitted, during deportation proceedings: continued detention; release  
12 under bond in the amount of not less than \$500; or release on conditional parole. 8  
13 U.S.C. § 1252(a) (1996). Although this Court determined that the parties were aware  
14 of these changes when they signed the FSA, *see Flores*, 394 F. Supp. 3d at 1065  
15 n.15, the Supreme Court has since clarified that § 1252(f)(1) strips this Court of  
16 jurisdiction to enjoin or restrict the expeditious-release provisions in the FSA on a  
17 class-wide basis. *See supra* Section I (discussing *Aleman Gonzalez*, 596 U.S. at 550-  
18 51). Given these legal changes, requiring DHS to incorporate the FSA's expeditious-  
19 release provisions for all accompanied children would contravene federal law. This  
20 Court therefore cannot require that DHS include such a provision in its regulations  
21 where doing so would be unlawful. 5 U.S.C. § 706(2)(A).

22 Likewise, requiring DHS to comply with independent-licensing requirements  
23 for FRCs amounts to an impossible task. State licensing of such facilities is in most

1 cases impossible because family detention is not something that states license. *See*  
2 *Flores*, 394 F. Supp. 3d at 1069. Of course, family detention generally only arises in  
3 the immigration-law context.

4 The FSA is also silent about licensing requirements for family detention—  
5 indeed, it is silent about family detention altogether. The FSA speaks only to  
6 licensing of facilities for “dependent children,” FSA ¶ 6, *i.e.*, UACs. *See Flores*, 828  
7 F.3d at 906 (agreeing that dependent children were UACs, but erroneously finding  
8 that accompanied children could somehow be placed in those same licensed  
9 facilities). Given the changed circumstances warranting FRCs—the pronounced  
10 increase in family-unit apprehensions since 2013 and perverse incentive that the lack  
11 of detention creates, leading hundreds of thousands of children to be taken on the  
12 most dangerous migration journey in the world—this Court should recognize the  
13 imperative that the government have the flexibility necessary to administer and  
14 enforce immigration law, and allow the licensing regulation to take effect.

15 Moreover, all FSA provisions that are consistent with the 2019 DHS  
16 regulations must be terminated. *Flores*, 984 F.3d at 744 (stating that the DHS  
17 regulations that were consistent with the FSA “may take effect.”). The Ninth Circuit  
18 found that only two of the DHS provisions were inconsistent with the FSA (the  
19 provisions related to “expeditious release,” as applied to accompanied minors, FSA  
20 ¶¶ 14, 18, and the licensing requirements for FRCs, FSA ¶ 19). *Id.* at 737–40. On  
21 that basis alone, the FSA should be terminated in full except as to Paragraphs 14, 18,  
22 and 19 as they apply to accompanied children. The permanent injunction should  
23

1 further be lifted from the corresponding sections of the 2019 Rule, for the reasons  
2 explained *supra*.

3 Further, this Court must terminate the FSA in its entirety as to CBP and lift  
4 the injunction on DHS's regulations related to CBP, as the Ninth Circuit explicitly  
5 found the regulations primarily governing CBP custody to be consistent with the  
6 FSA. *Id.* at 737 (concluding that 8 C.F.R. § 236.3(f) and (g)(2) were consistent with  
7 the FSA and "may take effect"). These provisions mirror the requirements in FSA  
8 ¶¶ 11, 12, and 25. The mandate on the Ninth Circuit's opinion issued on July 26,  
9 2021. ECF No. 93. Accordingly, by the clear terms of the FSA, ¶¶ 11, 12, and 25  
10 have terminated.<sup>11</sup>

11 Additionally, because the substantive terms of the FSA are terminated as to  
12 CBP, this Court should also relieve CBP of the FSA's administrative and monitoring  
13 obligations. Thus, this Court must relieve CBP of Sections X (reporting), XI  
14 (attorney-client visits), and XII (facility visits) of the FSA, as well as the  
15 transportation obligations of Section VIII (incorporated in 8 C.F.R. § 236.3(f),  
16 which has not been found inconsistent with the FSA) and terminate this Court's  
17 jurisdiction over CBP as to this litigation. *See Horne*, 557 U.S. at 450 (cautioning  
18 that federal-court decrees should be limited to "reasonable and necessary  
19 implementations of federal law."); *see also Patterson v. Newspaper & Mail*  
20 *Deliverers' Union of New York*, 13 F.3d 33, 39 (2d Cir. 1993) (explaining that, once  
21 a decree has served its purpose, "all of its provisions may be ended").

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22  
23 <sup>11</sup> The Court, therefore, must terminate the 2022 CBP Settlement, ECF No.  
1254-1, as the Settlement interprets FSA ¶¶ 11 and 12.

**III. Termination of the FSA Is Warranted Because Prospective Application Is No Longer Equitable.**

**A. This Court Should Terminate the FSA Because It Improperly Commits Immigration Enforcement and Detention Decisions to the Judiciary Rather Than to the Executive.**

Courts must ensure that a consent decree “does not put the court’s sanction on and power behind a decree that violates Constitution, statute, or jurisprudence.” *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 846 (5th Cir. 1993) (en banc) (citation omitted). The Ninth Circuit has held that “a district court may not approve a consent decree that conflicts with or violates an applicable statute.” *Conservation Nw. v. Sherman*, 715 F.3d 1181, 1185 (9th Cir. 2013) (internal quotations and citation omitted). Likewise, although the Attorney General has the authority to settle litigation, this authority “does not include license to agree to settlement terms that would violate the civil laws governing the agency.” *United States v. Carpenter*, 526 F.3d 1237, 1242 (9th Cir. 2008) (citation omitted); *cf. Biodiversity Assocs. v. Cables*, 357 F.3d 1152, 1169-70 (10th Cir. 2004) (“If the statute changes, the parties’ rights change, and enforcement of their agreement must also change. Any other conclusion would allow the parties, by exchange of consideration, to bind not only themselves but Congress and the courts as well.”). Because the FSA—through its terms, interpretation and applications, as well as its duration—is contrary to law, it is no longer equitable and must be terminated.

1                   **1. Enforcing the FSA Is Inequitable Because It Indefinitely Entangles**  
2                   **the Judiciary in Managing Immigration Policy.**

3           The FSA violates the separation of powers by permitting ongoing judicial  
4 micro-management of immigration matters committed to the Executive Branch.  
5 Judicial incursions into the realm of immigration affairs represent “substantial  
6 intrusion[s]” into the workings of the political Branches entrusted to implement  
7 policies towards migrants. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S.  
8 252, 268 n.18 (1977). The Supreme Court has explained—in this very case—“[f]or  
9 reasons long recognized as valid, the responsibility for regulating the relationship  
10 between the United States and our alien visitors has been committed to the political  
11 Branches of the Federal Government.” *Flores*, 507 U.S. at 305 (quoting *Mathews v.*  
12 *Diaz*, 426 U.S. 67, 81 (1976)). One of the underpinnings for this long-recognized  
13 proposition is that immigration policy involves “changing political and economic  
14 circumstances” that are appropriate for the political Branches to address, not the  
15 Judiciary. *Mathews*, 426 U.S. at 81; *see also San Francisco v. USCIS*, 944 F.3d 773,  
16 809 (9th Cir. 2019) (Bybee, J., concurring) (“In the immigration context . . . [w]e are  
17 limited . . . in our ability . . . to shape our immigration policies. We lack the tools of  
18 inquiry, investigation, and fact-finding that a responsible policymaker should have  
19 at its disposal.”).

20           This is one reason Congress enacted § 1252(f)(1). “For more than a century,”  
21 it has been well settled that a matter implicating foreign relations—such as  
22 immigration policy—is a “fundamental sovereign attribute” of the government’s  
23 Executive and Legislative Branches and “largely immune from judicial control.”

1 *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) (quoting *Fiallo v. Bell*, 430 U.S. 787,  
2 792 (1977)); *see also Shaughnessy*, 342 U.S. at 588–89 (“[A]ny policy toward aliens  
3 is vitally and intricately interwoven with contemporaneous policies in regard to the  
4 conduct of foreign relations . . .”). For these reasons, even aside from the  
5 jurisdictional bar to class-wide injunctive relief under § 1252(f)(1), respect for the  
6 political Branches’ authority over immigration policy dictates a narrow standard of  
7 judicial review over executive and legislative decisions in the realm of immigration.  
8 *Fiallo*, 430 U.S. at 792, 796; *Mathews*, 426 U.S. at 81–82.

9 Contravening these well-settled principles of the limited judicial role, the FSA  
10 has created a substantial and unprecedented intrusion of the Judiciary into the  
11 Executive’s administration of immigration policy. The scope of the FSA was too  
12 broad from the start and its overbreadth exacerbated when it is interpreted to apply  
13 to the very different context of *accompanied* children. The FSA “sets out nationwide  
14 policy for the detention, release, and treatment of minors in the custody of the INS.”  
15 FSA ¶ 9. It governs an open-ended, ever-changing, and never-ending class of “[a]ll  
16 minors who are detained in the legal custody of the INS.” *Id.* ¶ 10. This class has  
17 included millions of people over the years.<sup>12</sup> The FSA—originally designed to  
18 address a very specific set of narrow circumstances—has been interpreted to address  
19 the custody of all minors at all stages. *Id.* ¶¶ 12, 14–19, 21–27. It specifies details

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21 <sup>12</sup> In practice under this class definition, the class’s legal goals are not  
22 determined by named individual Plaintiffs with concrete interests at stake. Rather,  
23 the advocacy organizations acting as class counsel have been deciding the objectives  
of the litigation. The United States respectfully submits that no class counsel is  
adequate to such a monumental task. *See* Fed. R. Civ. P. 23(g).



1 about conditions of custody at various facilities, procedural provisions, and release  
2 policies. *Id.* Paragraph 9 of the FSA mandates rulemaking and provides that “[t]he  
3 final regulations shall not be inconsistent with the terms of this Agreement.” *Id.* ¶ 9.  
4 And the FSA puts no temporal limit on the judicial intrusion. Instead, amended  
5 Paragraph 40 states that the FSA “shall terminate 45 days following defendants’  
6 publication of final regulations implementing this Agreement,” *id.* ¶ 40 (as amended  
7 Dec. 7, 2001, Ex. J), which criteria can only be satisfied by a determination by the  
8 judiciary that the executive’s regulations are sufficient. As explained below,  
9 publishing final regulations implementing the FSA to meet criteria determined by  
10 the judiciary—without regard to any comments received or to any changed  
11 circumstances since 1997—would be contrary to the APA.

12 While the scope of the FSA was broad from the beginning, this Court’s  
13 interpretation and enforcement of the FSA have significantly expanded it beyond  
14 lawful bounds. Even when the FSA has been silent or unclear, this Court has issued  
15 specific directives to the government about managing nationwide-immigration  
16 enforcement. For example, while the FSA “does not address the potentially complex  
17 issues” of housing family units, “does not contain standards related to the detention  
18 of . . . family units,” and “gave inadequate attention to some potential problems of  
19 accompanied minors,” *Flores*, 828 F.3d at 906, this Court nonetheless applied the  
20 FSA to FAMUs and required release of accompanied minors under specified  
21 deadlines and standards irrespective of the custody status of their parents or legal  
22 guardians. Also, in 2020, this Court recognized that “Paragraph 12.A does not  
23 enumerate which rights must be included in a notice.” ECF No. 987 at 6. Yet this

1 Court nonetheless interpreted Paragraph 12.A to require a very specific “notice of  
2 rights pertaining to custody and release.” *Id.* In contrast, when ruling on the OCA  
3 issue, this Court held that the FSA’s use of the phrase “following arrest” did not  
4 require any actual “arrest” to be triggered. *See* ECF No. 1406 at 10. In practice, the  
5 FSA has effectively been interpreted as if it were an open-ended grant of authority  
6 to the *Judiciary* to set policy regarding alien children. That is not equity.

7 Further compounding the judicial intrusions upon the authority of the  
8 Executive, this Court has repeatedly applied the FSA to situations the parties did not  
9 anticipate, such as to aliens held pending expulsion pursuant to the Title 42 public  
10 health order issued during the pandemic. *See* ECF No. 976. This Court also  
11 interpreted the FSA’s terms to apply to placements in out-of-network facilities, ECF  
12 No. 1447 at 13, despite the absence of any mention of such facilities or any indication  
13 that the parties even contemplated out-of-network facilities in 1997. And in 2024,  
14 this Court applied the FSA’s requirements to OCAs, a novel situation that this Court  
15 called “open-air detention sites,” despite acknowledging that “it may be true that  
16 CBP did not initially *intend* for these locations to become” detention sites and CBP  
17 did not actually hold anyone in detention at the sites. ECF No. 1406 at 9.

18 This Court has also tried to prohibit the use of FRCs because they are not  
19 state-licensed, even though state-licensing of those facilities is in most cases literally  
20 impossible and not legally necessary. *See Flores*, 394 F. Supp. 3d at 1069. It is well  
21 settled under the intergovernmental-immunity doctrine that “the activities of the  
22 Federal Government are free from regulation by any state.” *Mayo v. United States*,  
23 319 U.S. 441, 445 (1943); *see also Trump v. Vance*, 591 U.S. 786, 829–31, 831 n.5

1 (2020) (Alito, J., dissenting) (collecting cases showing that “two centuries of case  
2 law prohibit the States from taxing, regulating, or otherwise interfering with the  
3 lawful work of federal agencies, instrumentalities, and officers”). It follows that  
4 immigration detention should not be required to be governed by state-licensing  
5 standards.

6 This Court also has stretched the FSA to dictate how the Government may  
7 implement the immigration-detention statutes. It required the Government to show  
8 that it detains families only for the amount of time needed to expeditiously screen  
9 family members for reasonable or credible fear, a requirement absent in any statute,  
10 *Flores*, 394 F. Supp. 3d at 1070. It placed temporal limits on times in custody  
11 irrespective of the Government’s enforcement needs, *see* ECF No. 833 at 3  
12 (requiring ICE to release children detained at FRCs for more than 20 days), *modified*,  
13 ECF No. 1024. Likewise, although the expedited-removal statute does not require  
14 an individualized assessment of release for accompanied children placed in  
15 expedited removal, this Court ordered the government to individually assess those  
16 accompanied children for release where federal law does not permit release. *Flores*,  
17 394 F. Supp. 3d at 1066–67; *Flores v. Barr*, 934 F.3d 910, 916–17 (9th Cir. 2019);  
18 ECF No. 784 at 16. In addition, though the FSA explicitly grants flexibility to the  
19 government during times of influx, this Court has rendered that flexibility illusory.  
20 *See, e.g., Flores*, 212 F. Supp. 3d at 916 (“Defendants shall not selectively apply the  
21 “influx” provision . . . .”). Although reversed by the Ninth Circuit, this Court sought  
22 to expand the FSA to require the government to release parents from immigration  
23

1 detention. *See Flores v. Lynch*, 212 F. Supp. 3d 907, 916–17 (C.D. Cal. 2015), *aff’d*  
2 *in part, rev’d in part*, 828 F.3d 898.

3 Beyond dictating how the Government must enforce the immigration-  
4 detention statutes, this Court also has overridden the agencies’ expert judgments  
5 regarding the actions necessary to protect class members and the community. This  
6 Court prohibited ORR from placing children in particular secure facilities based on  
7 gang affiliation. ECF No. 470 at 19–20. This Court further ordered ORR to stop its  
8 uniform requirement that post-release services be in place in the community before  
9 releasing a child to a sponsor. *Id.* at 30. It ordered ORR to cease elevating release  
10 decisions to the ORR Director or his designee, for children previously placed in  
11 restrictive settings. *See id.* at 29. It further ordered Defendants to transfer all class  
12 members out of residential-treatment centers “unless a licensed psychologist or  
13 psychiatrist has determined or determines that a particular Class Member poses a  
14 risk of harm to self or others.” *Id.* at 14. And, during the COVID-19 pandemic, this  
15 Court required ORR to release children to sponsors without conducting the  
16 fingerprint-background checks that ORR believed necessary to address “the  
17 dangers” inherent to releasing unaccompanied youth to “improperly vetted  
18 sponsor[s].” ECF No. 784 at 11–12; *see also* ECF No. 833 at 5 (“ORR shall review  
19 and amend its fingerprinting policy to provide for a less onerous chain of approvals  
20 or show cause to this Court why the policy, as written, is imperative[.]”). More  
21 broadly, during the pandemic, this Court interpreted the FSA to afford it greater  
22 authority to “require heightened inspections” of government facilities and to require  
23 the release of class members. ECF No. 740 at 9, 11.

1 By engaging in such wide-ranging management of Executive agencies, this  
2 Court has exceeded the Constitutional limits on the judicial role. The FSA’s general  
3 terms and expansive interpretations have encouraged Plaintiffs’ systemic challenges,  
4 seeking “*wholesale* improvement . . . by court decree”—“properly matters that  
5 should be pursued in the ‘offices of the Department[s] [of Homeland Security and  
6 Health and Human Services] or the halls of Congress, where programmatic  
7 improvements are normally made.’” *Whitewater Draw Nat. Res. Conservation Dist.*  
8 *v. Mayorkas*, 5 F.4th 997, 1011 (9th Cir. 2021) (quoting *Lujan v. Nat’l Wildlife*  
9 *Fed’n*, 497 U.S. 871, 891 (1990)). Plaintiffs’ counsel may “think that the third  
10 branch is more convenient or accessible,” but the traditional, customary mode of  
11 operation of the courts—consistent with Article III—is limited to controversies  
12 reduced to more manageable proportions. *Id.* at 1012; *see Int’l Union, United Mine*  
13 *Workers of Am. v. Bagwell*, 512 U.S. 821, 841 (1994) (Scalia, J., concurring)  
14 (equitable courts historically lacked jurisdiction to require performance of anything  
15 “‘more than a single affirmative act’” and did not “issue” relief “that required  
16 ongoing supervision”). This Court, by contrast, has exercised general supervisory  
17 authority over the federal-immigration agencies and directed changes by the  
18 agencies through court decree.

19 This Court has often characterized its longstanding and increasingly intrusive  
20 interference as mere enforcement of the FSA. *See, e.g., Flores*, 407 F. Supp. 3d at  
21 928. But the “Constitution’s division of power among the three branches is violated  
22 where one branch invades the territory of another, whether or not the encroached-  
23 upon branch approves the encroachment.” *New York v. United States*, 505 U.S. 144,

1 182 (1992). And the FSA “is no ordinary contract,” because it is now effectively  
2 open-ended and, as interpreted in response to Plaintiffs’ insistence, “it requires  
3 continuing supervision by the district court.” *Evans v. City of Chicago*, 10 F.3d 474,  
4 477–78 (7th Cir. 1993) (en banc) (plurality opinion). Indeed, in its recent ruling  
5 concerning termination of the FSA as to HHS, this Court concluded that it “also  
6 retains jurisdiction to modify the [FSA] or this Order should further changed  
7 circumstances necessitate”—essentially retaining never-ending jurisdiction over the  
8 FSA. ECF No. 1447 at 20. This Court’s “decrees implicate the citizenry’s interests  
9 as well as those of the parties and bear directly on the salubrious operation of public  
10 institutions.” *In re Pearson*, 990 F.2d 653, 658 (1st Cir. 1993); *see Rufo*, 502 U.S. at  
11 381 (noting that consent decrees “reach beyond the parties involved directly in the  
12 suit and impact on the public’s right to the sound and efficient operation of its  
13 institutions” (quoting *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989))).

14 For these reasons, “[c]onsent alone is insufficient to support a commitment by  
15 a public official that ties the hands of his successor.” *Evans*, 10 F.3d at 478; *see*  
16 *David B. v. McDonald*, 116 F.3d 1146, 1150 (7th Cir. 1997) (“[I]n a democracy the  
17 people may vote out politicians whose acts displease them, and elect new  
18 representatives who promise change.”); *cf. Free Enter. Fund v. Pub. Co. Acct.*  
19 *Oversight Bd.*, 561 U.S. 477, 497 (2010) (“Perhaps an individual President might  
20 find advantages in tying his own hands . . . He cannot, however, choose to bind his  
21 successors by diminishing their powers . . .”). As the D.C. Circuit has explained,  
22 there are “potentially serious constitutional questions about the power of the  
23 Executive Branch to restrict its exercise of discretion by contract with a private

1 party.” *Nat’l Audubon Soc., Inc. v. Watt*, 678 F.2d 299, 301 (D.C. Cir. 1982). Thus,  
2 the government’s consent to the FSA 28 years ago—*i.e.*, five Presidential  
3 Administrations ago—does not render lawful the breach of the separation-of-powers  
4 that the FSA continues to impose.

5 In addition, institutional-reform decrees, such as the FSA, may not exist in  
6 perpetuity because they remove authority from the elected branches of government  
7 to the judicial branch. In *Horne*, the Supreme Court expressed concern that  
8 “[i]njuncts of this sort bind state and local officials to the policy preferences of  
9 their predecessors and may thereby improperly deprive future officials of their  
10 designated legislative and executive powers.” 557 U.S. at 449 (internal quotations  
11 and citation omitted). The Supreme Court therefore criticized the lower courts for  
12 failing to consider “whether, as a result of important changes during the intervening  
13 years, the State was fulfilling its obligations under the [law] by other means.” *Id.* at  
14 439. And the Court went on to observe that a “flexible approach” to modifying such  
15 consent decrees allows courts to “ensure that responsibility for discharging the  
16 State’s obligations is returned promptly to the State and its officials when the  
17 circumstances warrant.” *Id.* at 450 (quotations and citations omitted).

18 Focusing on the terms of the original injunction, instead of the underlying  
19 federal law, causes the court to “improperly substitute[] its own educational and  
20 budgetary policy judgments for those of the state and local officials to whom such  
21 decisions are properly entrusted.” *Id.* at 455. To avoid this danger, courts must  
22 consider “whether ongoing enforcement of the original order [is] supported by an  
23 ongoing violation of federal law.” *Id.* at 454. If the government has implemented a

1 “durable remedy,” judicial oversight should cease. *Id.* at 450. Additionally, “federal-  
2 court decrees exceed appropriate limits if they are aimed at eliminating a condition  
3 that does not violate [federal law] or does not flow from such a violation.” *Id.*  
4 (alteration in original) (citation omitted); *see also United States v. Washington*, 573  
5 F.3d 701, 710 (9th Cir. 2009) (“The [Supreme] Court has repeatedly reminded us  
6 that institutional reform injunctions were meant to be temporary solutions, not  
7 permanent interventions, and could be kept in place only so long as the violation  
8 continued.”); *Evans*, 10 F.3d at 480 (“[E]ntry and continued enforcement of a  
9 consent decree regulating the operation of a governmental body depend on the  
10 existence of a substantial claim under federal law.”).

11 Here, the FSA and its enforcement by this Court implicate each of the  
12 Supreme Court’s concerns in *Horne*. The FSA raises sensitive separation-of-powers  
13 concerns and involves immigration and foreign policy—areas of core Executive  
14 Branch responsibility. For nearly three decades, the FSA has improperly divested  
15 Executive Branch officials of their full legitimate policymaking powers. Even if  
16 concerns about violations of the Constitution existed in 1997, the agencies have  
17 addressed them by promulgating regulations that far exceed the constitutional floor.  
18 *See generally* 2019 Rule; Foundational Rule; *see also* Ex. D (describing further  
19 updates to ORR’s UAC Policy Guide to establish policies consistent with the court’s  
20 June 28, 2024 order as to HHS). Indeed, the Supreme Court found that the former  
21 INS’s 1988 Rule did not violate alien minors’ substantive or procedural due process  
22 rights. *Flores*, 507 U.S. at 315. So the FSA is in many respects void *ab initio*.



1 But, despite its manifold actions to enforce the FSA over the last twenty-eight  
2 years, this Court has not analyzed “whether ongoing enforcement of the original  
3 order [is] supported by an *ongoing violation of federal law*” for decades now. *Horne*,  
4 557 U.S. at 454 (emphasis added). Nor has it asked whether its enforcement of the  
5 FSA is inhibiting the legitimate policymaking discretion of the Executive Branch in  
6 immigration matters where the federal government must be able to adapt to changing  
7 circumstances. *See Mathews*, 426 U.S. at 81; *Flores*, 507 U.S. at 305. This Court  
8 instead has been zealously focused on the original terms of the FSA. This incorrect  
9 focus (*Horne*, 557 U.S. at 455) has frozen federal officials’ ability to address and  
10 respond to a series of immigration crises since 2014, contributing substantially to  
11 the intolerable situation on the Southern Border.

12 The Court should thus dissolve the FSA because it is precisely the type of  
13 institutional-reform injunction that the Supreme Court cautioned against: it prevents  
14 the government from exercising its constitutional powers to develop new policies to  
15 address the changes in immigration to the United States. The FSA divests the  
16 Executive of its power to respond to new situations and foreign-relations concerns  
17 and transfers that power to the Judiciary, which is not equipped to change nor  
18 responsible to the public for its failures.

19 Moreover, the public interest is not served by permitting the unelected class  
20 counsel to wield litigation to facilitate this Court’s indefinite supervision of the  
21 American immigration system, which involves multiple agencies, hundreds of  
22 thousands of class members, and vast taxpayer resources. This Court should end its  
23

1 superintendence of this aspect of immigration policy and return responsibility for  
2 determining and executing immigration policy to the political branches.

3 **2. Enforcing the FSA Is Inequitable Because It Prescribes the**  
4 **Substantive Result of Agency Rulemaking**

5 In addition to exceeding a proper judicial role, the FSA impermissibly  
6 mandates the substantive results of agency rulemaking. Paragraph 9, which requires  
7 the Government to “publish the relevant and substantive terms of this Agreement as  
8 a Service regulation,” and Paragraph 40, which provides the termination of the FSA  
9 after publishing such regulations, create an obligation that exceeds the Executive  
10 Branch’s authority to bind successors.

11 In 2019, the government published regulations to set forth a nationwide policy  
12 addressing the custody and care of children in immigration custody. *See* 2019 Rule,  
13 84 Fed. Reg. 44,392. This was performed consistently with the government’s  
14 understanding that the FSA required it to engage in a rulemaking process regarding  
15 the treatment of detained minors—but not that the FSA required any foreordained  
16 result. ECF No. 639 at 26, 46–51.

17 This Court disagreed. It interpreted Paragraphs 9 and 40 of the FSA to mean  
18 that the final regulations must match *exactly* the substantive terms of the FSA—as  
19 well as this Court’s subsequent interpretation of those terms. *See Flores*, 407 F.  
20 Supp. 3d at 925 (“Since ‘[c]onditions subsequent are not favored by the law, and are  
21 construed strictly,’ and the New Regulations do not codify numerous relevant and  
22 substantive terms of the *Flores* Agreement, the *Flores* Agreement remains fully  
23 intact.” (alteration in original) (quoting 17A C.J.S. *Contracts* § 451 (2019))). As

1 interpreted by this Court in 2019, the FSA requires any future Executive Branch  
2 officials to adopt the specific policies in the FSA that were agreed to by the Clinton  
3 Administration over 25 years ago. Even more concerning, this Court suggested in  
4 2024 that the FSA could continue to bind agencies' policy choices forever, even  
5 *after* the publication of consistent regulations and the Agreement's termination. *Id.*  
6 ("The Court's termination of the FSA as to HHS is therefore *conditional* on there  
7 not being a rescission of those regulations, such as the Foundational Rule, in a manner  
8 inconsistent with the FSA.") (emphasis added). Consequently, if voters express a  
9 preference for an alternative, they are without recourse. Voters' preferences and the  
10 sovereign interests of the Executive are irrelevant. That is no way to run a  
11 democracy.

12 Despite HHS's publication of regulations implementing the FSA, this Court  
13 retained jurisdiction "to modify the Agreement or this Order should further changed  
14 circumstances necessitate, to ensure that the Rule faithfully implements the FSA as  
15 the parties originally contemplated." *Id.* Thus, this Court interpreted the FSA to  
16 require the government to engage in rulemaking with a preordained result, and to  
17 bind the government to that result in perpetuity.

18 Requiring the agencies to adopt a substantive policy through rulemaking when  
19 the agency has legitimate policymaking discretion to make other policy choices  
20 exceeds the judicial role. "[C]ourts cannot invade the jurisdiction of the other  
21 departments of government in matters of policy, and for a court to substitute its  
22 judgment or discretion for that of a member of the executive branch of government  
23 would amount to such an invasion." *Huntt v. Gov't of Virgin Islands*, 382 F.2d 38,

1 45 (3d Cir. 1967). As a general matter, courts considering whether to ratify consent  
2 decrees have been careful to emphasize that a permissible decree does not mandate  
3 the substantive result of any subsequent rulemaking. *See Housatonic River Initiative*  
4 *v. EPA*, 75 F.4th 248, 267–68 (1st Cir. 2023) (“Importantly, as the Petitioners  
5 concede, the Settlement did not legally constrain the EPA in deciding what  
6 provisions to include in the final permit.”); *Citizens for a Better Env’t v. Gorsuch*,  
7 718 F.2d 1117, 1121, 1129 (D.C. Cir. 1983) (holding that a consent decree was  
8 permissible when it “did not specify the substantive result of any regulations EPA  
9 was to propose” and did not “prescribe the content of the regulations”). Under its  
10 interpretation of the FSA, this Court has forced the agencies to adopt a specific  
11 substantive rule or else forever be subject to this Court’s jurisdiction and  
12 management. This Court, however, has no authority to exercise such control.

13 Mandating the substantive result of rulemaking through a settlement also  
14 violates the APA, which renders prospective application of the FSA inequitable and  
15 contrary to the public interest. Section 4 of the APA, 5 U.S.C. § 553, prescribes a  
16 three-step procedure for “notice-and-comment rulemaking.” First, the agency must  
17 issue a “[g]eneral notice of proposed rule making.” *Id.* § 553(b). Second, after the  
18 required notice, the agency must “give interested persons an opportunity to  
19 participate in the rule making through submission of written data, views, or  
20 arguments.” *Id.* § 553(c). “An agency must consider and respond to significant  
21 comments received during the period for public comment.” *Perez v. Mortg. Bankers*  
22 *Ass’n*, 575 U.S. 92, 96 (2015); *see Dep’t of Com. v. New York*, 588 U.S. 752, 773  
23 (2019) (agencies “examine[] ‘the relevant data’ and articulate[] ‘a satisfactory

1 explanation’ for [the] decision, ‘including a rational connection between the facts  
2 found and the choice made’” (citation omitted). Third, when promulgating the final  
3 rule, the agency must include in the rule’s text “a concise general statement of [its]  
4 basis and purpose.” 5 U.S.C. § 553(c).

5 “The process of notice and comment rule-making is not to be an empty  
6 charade.” *Conn. Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d 525, 528  
7 (D.C. Cir. 1982). Interested parties must have the opportunity “to participate in a  
8 meaningful way in the discussion and final formulation of rules.” *Id.* Therefore, APA  
9 rulemaking does not permit a contractual agreement to preordain any specific  
10 outcome. Indeed, “a binding promise to promulgate [final regulations] in the  
11 proposed form would seem to defeat Congress’s evident intention that agencies  
12 proceeding by informal rulemaking should maintain minds open to whatever insights  
13 the comments produced by notice under § 553 may generate.” *NRDC v. EPA*, 859  
14 F.2d 156, 194 (D.C. Cir. 1988).

15 Likewise, the Ninth Circuit has held that a court must not enter or enforce a  
16 consent decree that would require an agency to violate “procedural requirements”  
17 for rulemaking set by statute. *Conservation Nw.*, 715 F.3d at 1186. In *Conservation*  
18 *Northwest*, the Ninth Circuit considered “whether a district court may approve  
19 resolution of litigation involving a federal agency through a consent decree, which  
20 substantially and permanently amends regulations that the agency could only  
21 otherwise amend by complying with statutory rulemaking procedures.” *Id.* at 1183.  
22 The Ninth Circuit held that the district court had abused its discretion by approving  
23

1 that kind of consent decree, which “impermissibly conflicts with laws governing the  
2 process for such amendments” to the regulations. *Id.* at 1189.

3 Here, as interpreted by this Court, the FSA requires the agencies to close their  
4 eyes to alternatives and to adopt the provisions of the FSA in the final rule without  
5 regard to any comments received, changed circumstances since 1997, or new policy  
6 insights. *See* FSA ¶ 9 (“The final regulations shall not be inconsistent with the terms  
7 of this Agreement.”). If the government were to engage in rulemaking while  
8 irrevocably committed to those specific terms, the final rule would be subject to  
9 challenge for failing to comply with the APA’s rulemaking process. Thus, the FSA  
10 is improper because it “impermissibly conflicts with laws governing the process” for  
11 rulemaking. *Conservation Nw.*, 715 F.3d at 1189. The Executive officials did not  
12 have the authority to agree to the FSA as so interpreted, *see Carpenter*, 526 F.3d at  
13 1242, and consequently this Court does not have the authority to enforce the FSA  
14 prospectively, *see Conservation Nw.*, 715 F.3d at 1185.

15 The judicial involvement in this case has been excessive and has continued  
16 for too many years. Therefore, prospective application of the FSA is not equitable.  
17 This Court should grant this request for relief under Rule 60(b)(5) and terminate the  
18 FSA. In the alternative, this Court should grant relief from judgment under Rule  
19 60(b)(6) because this case presents the kind of “extraordinary circumstances” that  
20 cause injustice to the parties and risk “undermining the public’s confidence in the  
21 judicial process.” *Buck*, 580 U.S. at 123.

**B. Termination of the Consent Decree Is Warranted Due to Changes in  
Factual and Legal Circumstances**

The Executive Branch and its agencies must respond to changes in immigration trends and foreign relations to effectively administer and enforce the immigration laws. But the FSA prevents the Executive from exercising this authority. Refusing to terminate the FSA despite the changes in immigration priorities and migration influxes “insulate[s] the policies embedded in the order . . . from challenge and amendment” merely because it was written as a consent decree rather than a regulation. *See Horne*, 557 U.S. at 453. Dramatic changes in migration trends, foreign policy, and immigration priorities counsels against continued judicial enforcement of the FSA. DHS’s 2019 regulations address many of these changes and fully respect the constitutional and statutory rights of alien minors, and they should control.

Current immigration policies to limit unlawful entry further justify termination of the FSA. Immigration policy by definition involves “changing political and economic circumstances,” making it particularly appropriate for political maintenance and control. *Mathews*, 426 U.S. at 81. A “significant change” in factual circumstances or law “renders continued enforcement of the judgment detrimental to the public interest.” *Horne*, 557 U.S. at 453 (citation omitted). And such significant changes in circumstances are present here.

The number of children crossing or attempting to cross the Southwest border rose to unprecedented numbers in FY2024, and the FSA hamstrung the government

1 in addressing this catastrophic illegal migration.<sup>13</sup> In FY2024, the total number of  
2 family-unit apprehensions at the Southwest border was 555,578 (Ex. A ¶ 8)—  
3 compared to 473,682 in FY2019, when this Court last considered the government’s  
4 motion to modify the FSA—a nearly 40% increase in family-unit apprehensions  
5 when reported on an annual basis.<sup>14</sup> Likewise, UAC crossings have increased: in  
6 FY2023, the total number of UAC apprehensions at the southwest border was  
7 131,519, and in FY2024, almost 100,000, compared to 76,020 in FY2019. Ex. A ¶ 8;  
8 Ex. H. The surge in border encounters of accompanied and unaccompanied minors  
9 undermines the ability of DHS to comply with the FSA. Ex. A ¶¶ 16-18, 32-34.

10 In considering termination of the FSA, the relevant timeline is the change  
11 from when the FSA was entered. The border situation is nothing like what it was in  
12 1997. In the 1990s, INS encountered 7,000 to 8,000 alien minors each year at the  
13 border. Ex. D-1 at 1. Given the stability in alien-minor entries during the 12 years of  
14 litigation, the parties reasonably agreed that an “influx” occurred when the INS had  
15 more than 130 minors in its custody. FSA ¶ 12A. These numbers demonstrate the  
16 stark contrast between the situation today and the situation in 1997, when the FSA

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17 <sup>13</sup> The government recognizes that this Court has previously found that these  
18 changes in the landscape of immigration are not significant enough, on their own, to  
19 warrant termination or amendment of the FSA, ECF Nos. 177, 455. But border  
20 encounters are constantly evolving, and spikes in encounters that overwhelm the  
21 agencies and prevent faithful enforcement of the immigration statutes are important  
22 changes in circumstances that the Court should consider. Ex. A ¶¶ 7, 8, 14-18.

23 <sup>14</sup> See CBP, Southwest Border Migration FY2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions-fy2019> (updated Nov. 3, 2023) (viewed May 20, 2025), attached as Ex. H.



1 was entered. Nothing in the FSA suggests that the parties anticipated that the  
2 government would eventually encounter hundreds of thousands or even tens of  
3 thousands of alien minors per year. The antiquated FSA simply does not account for  
4 today's border encounters and need for placements.

5 Mandating continued adherence to the obsolete FSA is particularly  
6 inequitable because—as the Ninth Circuit has expressly recognized—the FSA “does  
7 not address the potentially complex issues involving the housing of family units and  
8 the scope of parental rights for adults apprehended with their children.” *Flores*, 828  
9 F.3d at 906. Nevertheless, even though the FSA never contemplated regulation of  
10 *accompanied* children, this Court has relied upon the FSA to dictate national policy  
11 for them for the last decade. Imposing regulations on the custody of children with  
12 their parents or legal guardians, while admittedly blind to their distinct needs and  
13 interests—and those of their parents and legal guardians—is fundamentally  
14 inequitable.

15 Further, the changed conditions of confinement warrant the termination of the  
16 FSA, or at the very least the FSA provisions related to custody conditions. In years  
17 leading up to the FSA, alien minors detained in INS facilities had “virtually no access  
18 to health care or personal counseling[,] no access to formal education . . . [and] little  
19 access to attorneys, telephones, or other means to prepare their legal cases.” Michael  
20 A. Olivas, *Unaccompanied Refugee Children: Detention, Due Process, and*  
21 *Disgrace*, 2 *Stan. L. & Pol’y Rev.* 159, 160 (1990); *see generally* Compl. The  
22 original challenge in this case was to the conditions of UAC confinement—Plaintiffs  
23 alleged that their detention violated their due-process right because they: (1) did not

1 receive any educational materials; (2) did not have access to medical or mental-  
2 health care; (3) lacked access to phones and could not communicate with family  
3 members or attorneys; (4) received zero recreation time; (5) were denied family  
4 visitation; (6) were subject to strip searches; (7) were held with unrelated adults; and  
5 (7) could not be released from these conditions unless a parent or legal guardian  
6 submitted to an interrogation. *See generally* Compl. It is undeniable that conditions  
7 have drastically improved.

8 Under the HHS's and DHS's own policies and regulations, the agencies  
9 provide all the relief originally sought in the complaint to the extent permitted by  
10 law. Alien minors receive formal education, have routine access to doctors, dentists  
11 and psychologists, and have access to regular phone calls to talk to family and  
12 attorneys. *See* 8 C.F.R. § 236.3(i)(4); 45 C.F.R. §§ 410.1302, 410.1307, 410.1309;  
13 FRS § 4.3. They have food menus designed by dietitians, access to showers, clean  
14 clothing, toys, television, recreation time, and more. *See* 8 C.F.R. § 236.3(i)(4); 45  
15 C.F.R. 410.1302; FRS § 4.1. Strip searches are prohibited, and minors are no longer  
16 held with unrelated adults. 8 C.F.R. § 236.3(g); 6 C.F.R. §§ 115.10-95, 115.110-  
17 195; TEDS §§ 3.0, 4.0; FRS § 2.6-2.7. As to UACs, HHS releases minors without  
18 unnecessary delay to a vetted sponsor—who need not be a parent or legal guardian—  
19 so long as release from detention is permitted by statute and does not present a  
20 danger to the minor or to others and the minor is not a flight risk. 45 C.F.R. §  
21 410.1201. Because the government's custody regulations and policies now provide  
22 the precise relief sought in the original complaint, judicial oversight is no longer  
23 equitable. *Horne*, 557 U.S. at 466.

1 The FSA has thus warped federal policy in a manner that few could defend:  
2 even though its terms were admittedly set without ever *considering* the unique issues  
3 presented by accompanied children, it nonetheless has dictated national policy  
4 concerning them. It does a profound disservice to those children and their parents  
5 and legal guardians to saddle them with policies that were designed without any  
6 consideration of their actual needs. Continued application of such unreasoned policy  
7 is not remotely equitable.

8 It also does a profound disservice to those who may be harmed by illegal  
9 aliens. In January 2025, Congress and President Trump recognized this harm by  
10 enacting the Laken Riley Act. The FSA, as amended in 2001, could not have  
11 considered such an Act. Now, DHS could be sued because it decides to release an  
12 illegal alien subject to mandatory detention. The FSA does not permit DHS the  
13 flexibility to ensure compliance with this new statute.

14 As the Supreme Court recognized in *Horne*, where officials “inherit overbroad  
15 or outdated consent decrees that limit their ability to respond to the priorities and  
16 concerns of their constituents, they are constrained in their ability to fulfill their  
17 duties as democratically-elected officials.” *Horne*, 557 U.S. at 449. The FSA,  
18 however, is an inherently overbroad and outdated consent decree that has  
19 constrained subsequent administrations from responding to continuous surges in  
20 family-unit apprehensions. Even though the FSA is silent about family detention or  
21 release provisions for accompanied minors, this Court has interpreted the FSA to  
22 provide the same rights of release to accompanied minors as UACs, even though  
23 their parents and guardians were not subjects of the FSA. *See supra*, section II.B.

1 As of March, 2025, DHS has re-instituted FRCs, which will house  
2 accompanied minors and their accompanying family members, to ensure proper  
3 custodial conditions for family units who are subject to detention and to ensure the  
4 United States retains its ability to enforce immigration laws. Ex. F ¶ 13. These FRCs  
5 are necessary to ensure that DHS can comply with the mandatory-detention  
6 authorities, as well as keep families together while they await a decision on their  
7 immigration proceeding. *Id.* ¶¶ 15, 29.

8 The FRCs are also preferable compared to keeping families in CBP custody  
9 while they await a decision in their immigration proceedings, as the FRCs have more  
10 amenities and are better equipped for longer-term detention. *See* Ex. A ¶¶ 17, 56  
11 (stating that CBP facilities are not designed for long-term care). When FRCs are  
12 unavailable, CBP must house families in facilities that are not designed for long-  
13 term detention and lack the amenities of FRCs. To avoid detaining family units at  
14 CBP facilities during their immigration proceedings—while also allowing the  
15 government to comply with the mandatory-detention statutes—this Court should  
16 terminate the FSA and permit the previously enjoined DHS regulations to go into  
17 effect so that DHS can utilize FRCs.

18 The FSA as interpreted by this Court and the Ninth Circuit would require DHS  
19 to present parents and/or legal guardians of accompanied minors with a binary  
20 choice to either waive the child’s right to be released under the FSA or waive her  
21 parental right and permit her child to be temporarily released to someone else’s care  
22 and custody. While holding accompanied children in immigration detention may  
23 contravene the FSA, it is consistent with the detention statutes and does not violate

1 class members' due process rights or any other federal law. *Flores*, 507 U.S. at 302,  
2 309, 315. Given the reopening of FRCs that are equipped to hold children and  
3 families, this change in factual circumstance warrants the termination of the FSA  
4 provisions related to release.

### 5 **CONCLUSION**

6 For the foregoing reasons, Defendants request that this Court terminate the  
7 FSA as to all Defendants and dissolve this Court's injunction of DHS's regulations  
8 for apprehension, processing, care, and custody of alien minors, ECF No. 690.

1 DATED: May 21, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on May 22, 2025, I served a copy of the foregoing pleading on all counsel of record by means of the District Court's CM/ECF electronic filing system.

/s/ Katelyn Masetta-Alvarez  
Senior Litigation Counsel  
U.S. Department of Justice  
Office of Immigration Litigation

**CERTIFICATE OF COMPLIANCE**

I certify that this brief contains 14,883 words. Defendants have filed concurrently with this motion an ex parte application for leave to file an oversized memorandum of points and authorities not to exceed 15,000 words.

/s/ Katelyn Masetta-Alvarez  
Senior Litigation Counsel  
U.S. Department of Justice  
Office of Immigration Litigation

**Index of Exhibits**  
**Defendants' Motion to Terminate Settlement Agreement**  
**and to Dissolve Injunction of Agency Regulations**  
***Flores v. Bondi*, Case No. CV 85-cv-4544-DMG (C.D. Cal.)**

<b>Description</b>	<b>Exhibit</b>
Declaration of John Modlin	<b>A</b>
Declaration of Marc Rosenblum	<b>B</b>
International Office of Migration, US-Mexico Border World's Deadliest Migration Land Route (Sept. 12, 2023), available at <a href="https://www.iom.int/news/us-mexico-border-worlds-deadliest-migration-land-route">https://www.iom.int/news/us-mexico-border-worlds-deadliest-migration-land-route</a> (Sept. 12, 2023) (viewed Apr. 7, 2025)	<b>C</b>
Declaration of Toby Biswas	<b>D</b>
Administration for Children & Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program, <i>Fact Sheet</i> (May 2014), available at <a href="https://acf.gov/sites/default/files/documents/orr/unaccompanied_childrens_services_fact_sheet.pdf">https://acf.gov/sites/default/files/documents/orr/unaccompanied_childrens_services_fact_sheet.pdf</a> (viewed May 20, 2025),	<b>D-1</b>
Fact Sheets and Data, available at <a href="https://acf.gov/orr/about/ucs/facts-and-data">https://acf.gov/orr/about/ucs/facts-and-data</a> (updated May 12, 2025) (viewed May 20, 2025)	<b>D-2</b>
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Declaration of Dawnisha Helland	<b>G</b>
U.S. Immigration and Customs Enforcement, Family Residential Standards 2020, available at <a href="https://www.ice.gov/detain/detention-management/family-residential">https://www.ice.gov/detain/detention-management/family-residential</a> (updated Feb. 18, 2022) (viewed May 20, 2025).	<b>H</b>
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1997 Flores Settlement Agreement and 2001 Amendment	<b>J</b>



# Exhibit A

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **CENTRAL DISTRICT OF CALIFORNIA**

3  
4 Jenny Lisette Flores, *et al.*,  
5                                   Plaintiffs,

6                                   v.

7 Pamela Bondi, Attorney General of the  
8 United States, *et al.*,  
9                                   Defendants.

Case No. 2:85-cv-04544-DMG

District Judge Dolly M. Gee

10  
11                                   **DECLARATION OF JOHN MODLIN**

12  
13                   I, John Modlin, pursuant to 28 U.S.C. § 1746, and based upon my personal  
14 knowledge and information made known to me from official records and reasonably  
15 relied upon in the course of my employment, relating to the above-captioned matter,  
16 hereby declare as follows:  
17

18  
19               1.     I currently serve as the Acting Deputy Commissioner of U.S. Customs  
20 and Border Protection (CBP). I have held this position since on or about December 29,  
21 2024. On October 20, 2024, I was appointed to the position of Chief Operating Officer  
22 of CBP. Prior to this role, I served as the Chief of the United States Border Patrol,  
23 Tucson Sector. I have also previously served as Chief of the U.S. Border Patrol, Miami  
24 Sector. I have served in the U.S. Border Patrol since 1995. In my career I have also  
25 held numerous positions at CBP headquarters and in the field, including Senior Patrol  
26  
27  
28

1 Agent, Supervisory Border Patrol Agent, Assistant Chief Patrol Agent, Patrol Agent  
2 in Charge, Deputy Chief Patrol Agent, and Operations Officer.  
3

4 2. In my role as Acting Deputy Commissioner, I am the agency's senior  
5 career official, working closely with the Acting Commissioner to ensure that CBP's  
6 mission of protecting the United States' borders is carried out effectively in partnership  
7 with other federal, state, local, and foreign entities.  
8

9 3. In my role as Chief Operating Officer, I ensure that the frontline is  
10 equipped with the personnel, tools, and information that are needed, improving the  
11 agency's collective capacity to adapt and respond to an ever-changing environment.  
12

13 4. I am familiar with the 1997 *Flores* Settlement Agreement (FSA),  
14 including the requirement that juveniles be held in facilities that are safe and sanitary;  
15 the requirement that juveniles be provided access to food, drinking water, toilets, sinks,  
16 medical care, and adequate ventilation; and that CBP monitor its own compliance with  
17 these terms. I am aware that according to orders from the courts in the *Flores* litigation,  
18 the FSA applies to all juveniles, regardless of whether they are accompanied by adult  
19 family members.  
20

21 5. CBP's central mission is to facilitate the flow of legal immigration and  
22 trade while preventing the illegal smuggling and trafficking of people and contraband.  
23 With respect to border management and control, CBP takes a comprehensive  
24 approach, coordinating activities in customs, immigration, border security, and  
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28

1 agricultural protection. CBP's mission is extremely complex, requiring CBP to  
2 balance many seemingly competing priorities. Among other things, CBP is  
3 responsible for securing the border while promoting lawful trade and travel, including:  
4 facilitating the entry of individuals authorized to enter the country; apprehending those  
5 who use unlawful means to enter or are otherwise inadmissible; aiding other law  
6 enforcement agencies to disrupt and dismantle transnational criminal organizations;  
7 referring instances where individuals may have been victims of trafficking to U.S.  
8 Immigration and Customs Enforcement (ICE); providing emergency assistance to  
9 persons in distress; intercepting illicit drugs and weapons, as well as agricultural and  
10 floral pests; identifying individuals with suspected national security concerns; and  
11 conducting operations at CBP's 328 ports of entry (POEs) and 131 Border Patrol  
12 stations.  
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17

18 6. CBP maintains data and information in its systems of record regarding  
19 encounters, processing, dispositions, custody activities, and amenities, among other  
20 things. In the course of my job, I rely on data and information pulled from our systems  
21 of record and provided to me in regular reporting and upon request. I understand that  
22 data provided to me is generally pulled from live CBP systems and data sources, and  
23 may be subject to change due to corrections, systems changes, changes in data  
24 definition, additional information, or encounters pending final review. Encounter data  
25 in this declaration was pulled from CBP systems and is accurate as of the time it was  
26  
27  
28

1 provided to me and added to this declaration. Recent CBP statistics for encounters on  
2 the Southwest land border may be found here:

3  
4 <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

5  
6 **The United States Border Patrol**

7 7. Border Patrol is a component of CBP and is responsible for securing U.S.  
8 borders between POEs. This includes the 6,000 miles of Mexican and Canadian  
9 international land borders and 2,000 miles of coastal waters surrounding the Florida  
10 Peninsula and the island of Puerto Rico. Border Patrol agents work around the clock  
11 in all types of terrain and weather conditions and in many isolated communities  
12 throughout the United States. There is no typical day for Border Patrol; rather, Border  
13 Patrol apprehension rates can vary widely depending on a number of factors, the vast  
14 majority of which are outside the control of CBP or Border Patrol. Over the past few  
15 years daily apprehensions have been as high as 10,844 on December 18, 2023, and as  
16 low as 171 on March 16, 2025.

17  
18 8. Moreover, the demographics of aliens crossing the Southwest border  
19 have changed substantially over the past decade. For example, in FY2013 the number  
20 of individuals apprehended by Border Patrol crossing the Southwest border who were  
21 members of family units was 14,855. In FY2022 that number was 482,962, in FY2023  
22 it was 621,311, and in FY 2024 it was 555,578. The numbers of Border Patrol  
23 encounters of unaccompanied alien children (UACs) also are significant in recent

1 years, with 149,093 in FY2022, 131,519 in FY2023, and 99,704 in FY2024. More  
2 recently, the numbers of encounters along the Southwest border have decreased, but  
3 they remain higher than they were in the early 1990s. Since the beginning of FY2025,  
4 as of the date of this declaration, Border Patrol has had 22,662 encounters with UACs,  
5 and 50,662 with individuals in family units.  
6  
7

8 Border Patrol Apprehension and Processing for *Flores* Class Members  
9

10 9. Once a Border Patrol agent encounters an individual the agent believes to  
11 be unlawfully present, the agent will first establish alienage and determine if the  
12 individual is a minor. If the individual presents signs of an emergent medical issue, the  
13 Border Patrol agent will render first aid, if necessary, and coordinate transportation of  
14 that individual to the appropriate medical center (likely, the closest available hospital).  
15  
16

17 10. Once initial questioning is completed in the field, aliens will be brought  
18 to a Border Patrol station for further processing. Once aliens are in custody at a Border  
19 Patrol facility, Border Patrol agents collect biographic and biometric information from  
20 certain aliens and conduct records checks through CBP and other law enforcement  
21 systems. Agents also question aliens individually on issues related, for instance, to  
22 their biometric and biographic results, ability to lawfully enter or remain in the United  
23 States, and fear of returning to their country of origin.  
24  
25

26 11. When a child is apprehended, the Border Patrol agent will process the  
27 child and complete steps to document the apprehension. For instance, the Border Patrol  
28

1 agent may use a form related to screening required under the Trafficking Victims  
2 Protection and Reauthorization Act (TVPRA) or a sworn statement for certain children  
3 being placed in removal proceedings before an immigration judge. All children are  
4 provided an I-770, Notice of Rights.  
5

6  
7 12. If the child appears unaccompanied, the agent will ask further questions  
8 to determine if the child is an “unaccompanied alien child” or UAC. UACs are  
9 processed pursuant to special procedures established by Congress in 2008 through the  
10 TVPRA. The TVPRA places specific restrictions on the manner in which UACs may  
11 be processed. With respect to a UAC, Border Patrol agents screen the child to  
12 determine, among other things, whether he or she has a fear of return to his or her  
13 country of origin or has been a victim of a severe form of trafficking in persons. If the  
14 child is from Mexico or Canada, does not have protection concerns, and is capable of  
15 making an independent decision to withdraw his or her application for admission to  
16 the United States, the child may be allowed to withdraw the application for admission.  
17 Where DHS seeks to remove a UAC, it must initiate removal proceedings under 8  
18 U.S.C. § 1229a, as UACs are not subject to expedited removal or other streamlined  
19 removal processes.  
20

21 13. UACs who are placed in removal proceedings are transferred to the  
22 custody of the Department of Health and Human Services (HHS) within 72 hours after  
23 they are identified as being unaccompanied. In some cases, however, a child cannot  
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1 be transferred to HHS immediately-such as when HHS does not have any immediately  
2 available bed space. In such cases, Border Patrol will continue to provide care to the  
3 child until HHS can accept custody.  
4

5 14. Children who are determined to be accompanied by their parents or legal  
6 guardians (accompanied children) are processed under the Immigration and  
7 Nationality Act, including voluntary return, expedited removal (including, where  
8 appropriate, referral for a credible fear determination), placement of the child (usually  
9 with his or her family) into removal proceedings under 8 U.S.C. § 1229a by issuing a  
10 Notice to Appear (NTA), or, in limited instances, parole or reinstatement of a prior  
11 removal order.  
12  
13  
14

15 15. Border Patrol normally seeks to transfer to ICE all aliens in its custody  
16 who cannot be immediately repatriated, rather than releasing aliens directly from its  
17 custody. *See, e.g.*, Securing Our Borders, Executive Order No. 14165 (January 20,  
18 2025) (ending catch and release policy); Memorandum from Pete Flores, Senior  
19 Official Performing the Duties of the Commissioner, “Ending Catch and Release”  
20 (January 20, 2025). Border Patrol, however, has been forced to release families  
21 directly when border apprehensions have outpaced DHS’s available family detention,  
22 processing and transportation capacity.  
23  
24  
25

26 16. From 2021 to 2024, USBP facilities faced significant increases in  
27 individuals in custody which required USBP to take major mitigating steps. For  
28



1 example, USBP erected Soft Sided Facilities in 7 Southwest Border Sectors: San  
2 Diego, Tucson, Yuma, El Paso, Del Rio, Laredo, and Rio Grande Valley. USBP also  
3 entered into transportation contracts (including air and bus) to transfer aliens to other  
4 facilities consistent with capacity limitations and custodial requirements. USBP met  
5 the overwhelming strain on its law enforcement resources on the Southwest border by  
6 using Data Entry Initiative contractors, Border Patrol Processing Coordinators,  
7 temporary duty assignments from Northern Border sectors, the DHS Volunteer Force,  
8 and requests for assistance from numerous other government agencies, among other  
9 efforts, to ensure adequate processing of aliens in custody. Even with this significant  
10 increase in resources, Border Patrol was forced to release people from custody when  
11 the strain on its resources became too great. This was particularly true for family units  
12 who could not be transferred to ICE because ICE did not have any family residential  
13 centers during that time period.

14  
15 17. Border Patrol facilities are designed to be short-term holding facilities for  
16 processing aliens before they are transferred to ICE, HHS, or another agency as  
17 appropriate, voluntarily returned if from a contiguous country, or released as  
18 appropriate. They are not designed for long-term care and detention. Every effort is  
19 made to hold detainees for the least amount of time required to process, transfer, or  
20 remove those in custody as promptly as is appropriate and operationally feasible.

21  
22 18. A recent *Flores* court decision held that children who were waiting

1 outdoors in open air congregation areas for pickup by Border Patrol would be  
2 considered in Border Patrol custody if Border Patrol agents directed them to certain  
3 areas to wait for transport to Border Patrol facilities, thus triggering the requirements  
4 of the FSA. Because Border Patrol cannot provide all the amenities required by the  
5 FSA to minors waiting outside in open air congregation areas, Border Patrol had to  
6 limit its engagement with aliens it encountered in these locations to avoid triggering  
7 the FSA requirements. The court order thus complicated Border Patrol's ability to  
8 bring aliens quickly and safely into Border Patrol facilities for processing. To my  
9 knowledge the issue of aliens congregating in outdoor areas for pickup by the  
10 Immigration and Naturalization Service (INS) was not a challenge that existed in 1997.

11  
12  
13  
14  
15 Custody Conditions in Border Patrol Facilities  
16

17 19. Because the apprehension rates for Border Patrol can vary widely, over  
18 the years Border Patrol has developed custody practices that are adaptable and scalable  
19 to ensure the provision of safe, secure, and clean facilities to process detainees  
20 regardless of the number of aliens being held in Border Patrol custody and what types  
21 of facilities it is using for custody. Border Patrol also complies with the requirements  
22 of CBP's National Standards on Transport, Escort, Detention and Search (TEDS  
23 Policy) as they pertain to detention conditions for minors.  
24  
25

26 20. Detainees held in Border Patrol custody are normally separated for safety  
27 and security reasons based on factors such as age and sex and whether they claim to  
28

1 be in a family unit. Where operationally feasible, children are separated by both age  
2 and sex and adults are separated by sex. Unaccompanied children should not be held  
3 with adults who are not related to them. Separation of families, while being held in a  
4 Border Patrol facility, is sometimes required in order to ensure the safety and security  
5 of all those being held in custody by Border Patrol. Normally, for example, groups of  
6 teenage boys and girls are segregated and placed in separate rooms. However, every  
7 effort is made to keep young children with their parents. Whenever operationally  
8 feasible, unaccompanied juvenile siblings should not be separated unless separation is  
9 deemed necessary for safety purposes. Moreover, Border Patrol agents provide  
10 opportunities for contact between family members who may be separated while in the  
11 facility for at least one hour every twenty-four hours. These visits are tracked in the  
12 system of record.

13  
14 21. Traditionally, Border Patrol has held detainees in Border Patrol stations.  
15 The stations have limited available space, but Border Patrol nonetheless prioritizes  
16 children and ensures that all children in custody are provided with the amenities  
17 necessary to ensure safe and sanitary conditions.

18  
19 22. Beginning in approximately 2021, in response to massive growth in the  
20 numbers of aliens entering the United States by crossing the Southwest border between  
21 POEs (and in particular an increase in the number of children and families being  
22 apprehended), Border Patrol stood up soft-sided facilities (or other similar facilities)

1 in its busiest Sectors. These facilities are much larger than brick-and-mortar Border  
2 Patrol stations and provide an easier way for Border Patrol to ensure that large numbers  
3 of aliens in custody are provided with necessary amenities.  
4

5       23. In soft-sided facilities children and families are held in large pods which  
6 can hold more people than traditional holding rooms in Border Patrol stations. The  
7 pods where the families and children reside while in Border Patrol custody are  
8 constructed of plywood walls with plexiglass fronts and are laid out in a manner so  
9 that they are easy to monitor with fewer Border Patrol agents or contract personnel.  
10 Children are able to move freely about their pod, and the facility does not have any  
11 fencing or other enclosures except as needed for security reasons. In some facilities  
12 the pods have an open center area surrounded by sub-pods, and the doors to each sub-  
13 pod remain unlocked so that children can move freely in and out and can congregate  
14 in the center common area. In the pods, children have access to children's books, age-  
15 appropriate television, and toys.  
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21       24. Border Patrol also uses other types of facilities that are more permanent  
22 but differ from Border Patrol Stations. For example, in El Paso Sector, Border Patrol  
23 has a modular facility that is more permanent than a soft-sided facility and has larger  
24 pods and more space than a Border Patrol station, and in the Rio Grande Valley (RGV)  
25 Sector, Border Patrol spent over \$9 million reconfiguring a warehouse to provide a  
26 more permanent custody facility with larger pods and more holding space.  
27  
28

1           25. Regardless of whether children are held in Border Patrol stations, soft-  
2 sided facilities, or other similar facilities, all facilities ensure safe and sanitary  
3 conditions by maintaining (or purchasing as needed) an adequate supply of items  
4 including clothing and undergarments, diapers and wipes, soap or hand sanitizer,  
5 feminine hygiene products, toothbrushes, and toothpaste. All these items are available  
6 within reach where space allows, or upon request. Mats and blankets (usually mylar  
7 blankets, but cloth blankets are available in some locations) are provided to all  
8 detainees. Facilities also have functioning toilets and sinks which are inspected daily  
9 and cleaned at least twice a day, and an adequate supply of toilet paper.  
10

11           26. Age-appropriate food is provided for children, including bottles and  
12 formula. Some facilities provide meals to children in custody, including tender-age  
13 children, via a contractor, who must comply with all applicable sanitation and food-  
14 preparation requirements. Where possible menus include a menu specific for children  
15 ages 2-5 as well as food appropriate for older children, and all menus are reviewed by  
16 a nutritionist. For smaller facilities meals may be provided through delivery or using  
17 meals that may be prepared onsite at the facility. Snacks are also made available to  
18 children at all facilities at all times, along with bottled water (or other potable water  
19 sources with cups), milk, and juice. Posters in English and Spanish, with pictures of  
20 available hygiene products, toys, snacks, and baby needs are displayed prominently  
21 near the hold rooms. In some locations, families and children also are shown a video  
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1 that provides information about available amenities. In most facilities people in  
2 custody may help themselves to snacks and supplies from a cart or table.

3  
4 27. All facilities endeavor to provide space sufficient for children to sleep,  
5 and where possible will dim the lights in the nighttime hours to make it easier for them  
6 to do so. CBP's TEDS Policy provides that "[r]easonable efforts will be made to  
7 provide showers, soap, and a clean towel to juveniles who are approaching 48 hours  
8 in detention." Therefore, where possible given the limitations of available facilities  
9 and the time spent in custody, children may also be offered showers with shampoo and  
10 body wash, clean clothes, and the opportunity to launder their existing clothes.  
11  
12

13  
14 28. Aliens in Border Patrol custody are informed of their rights orally during  
15 processing through prominently displayed posters and notices in multiple languages  
16 that outline the credible fear process and the right to consult with an attorney or  
17 representative, and by video that may be shown during intake or processing.  
18

19  
20 29. Border Patrol facilities generally maintain an ambient temperature in all  
21 pods or holding rooms that is between 66 and 83 degrees Fahrenheit, though the  
22 precise range may vary depending on location. Border Patrol agents or facility contract  
23 personnel check and record the temperature with a handheld gauge generally once per  
24 shift.  
25

26  
27 30. Border Patrol makes every effort to provide children with recreation time  
28 in available space and child-appropriate activities. Border Patrol has a contract that

1 can be scaled up or down as needed to provide child caregivers who care for children  
2 by, among other things, interacting with the children and reading, playing, watching  
3 movies, and otherwise engaging with the children in custody.  
4

5 31. Border Patrol also takes a number of steps to monitor the time that  
6 families and unaccompanied children spend in custody. Border Patrol generates  
7 automatic reports that assist with identifying priority cases such as aliens with medical  
8 needs and those with a high time in custody (TIC), which are monitored by Border  
9 Patrol management at the headquarters and local levels for resolution.  
10  
11

12 32. It is imperative that CBP maintain the flexibility to expand and contract  
13 operations as needed to respond to changing conditions on the border. In mid-March  
14 2025, as the number of aliens in Border Patrol custody significantly decreased each  
15 day, CBP began reducing the number of soft-sided facilities along the Southwest  
16 border, saving between \$5 and \$30 million per month in operating costs for each  
17 facility. Even throughout the time that Border Patrol operated soft-sided facilities it  
18 maintained the ability to expand or reduce their operations (by closing portions of a  
19 particular facility or placing it in “warm” status so that it could be made available again  
20 very quickly if needed), allowing for continued flexibility. At smaller Border Patrol  
21 stations, CBP may need to maintain flexible contracts for meal services, portable  
22 toilets and decontamination systems, and emergency cleaning services to address  
23 higher volumes of aliens in CBP custody during a surge. Overall, each sector must  
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1 have the flexibility needed for its particular circumstances to be able to provide needed  
2 resources when conditions require them to do so.

3  
4 33. Responding to a surge or reduction in apprehensions is not just a matter  
5 for the affected sector but must constantly be evaluated across other sectors as well.  
6 For example, in the past, Border Patrol implemented a system of remote processing to  
7 allow agents located in other sectors to process aliens in sectors experiencing an influx  
8 or surge. Virtual Processing maximizes processing in a busy sector while freeing up  
9 resources on the ground to respond to the immediate needs of those in custody.  
10  
11

12 34. As noted above, the large increase in aliens apprehended along the  
13 Southwest border, particularly children and families, and large-group surrenders,  
14 which often include children, can quickly overwhelm affected stations. It takes time  
15 to process each alien properly, and Border Patrol will continue to process each person  
16 in accordance with the law and procedures laid out above. Unfortunately, the need to  
17 properly process aliens and make appropriate decisions about custody and detention—  
18 combined with limited capacity at HHS and DHS facilities and the strain on resources  
19 created by the influx—may result in longer periods in CBP custody.  
20  
21  
22  
23

#### 24 **The Office of Field Operations**

25 35. The Office of Field Operations (OFO) is another CBP component and is  
26 the primary federal law enforcement organization responsible for preventing the entry  
27 of terrorists and their weapons at official CBP POEs, and for preventing the illicit  
28



1 trafficking of people and contraband from entering or leaving the United States at  
2 POEs. OFO does not just operate at land borders, but also at seaports and airports, all  
3 of which vary widely in space, size, and operating conditions. No POE is the same as  
4 any other, and OFO often must quickly adapt to meet its custody obligations in these  
5 vastly differing environments. This can require allocating significant resources to  
6 coordinate with federal partners to accommodate the needs of POEs in remote parts of  
7 the Southwest land border, and updating dated infrastructure not originally designed  
8 for longer periods of detention for alien minors. At air POEs, this has involved  
9 repurposing “transit lounges” into holding rooms for inadmissible applicants for  
10 admission. At land POEs, this has involved repurposing rooms designed for asylum  
11 interviews into rooms for holding children and families. Moreover, the numbers of  
12 individuals OFO processes through its POEs may vary drastically based on border  
13 policy decisions. OFO systems of record show the drastically changed numbers of  
14 inadmissible aliens encountered at POEs from 216,526 (including 6,122 aliens in  
15 family units and 3,088 unaccompanied children) in FY2012, to 1,342,121 (including  
16 435,244 aliens in family units and 10,708 unaccompanied children) in FY2024.

23  
24 OFO Apprehension and Processing for *Flores* Class Members

25 36. OFO conducts immigration inspections of all individuals applying for  
26 admission into the United States at a POE. When OFO encounters an individual who  
27 is inadmissible to the United States, OFO detains the individual for a short period of  
28

1 time for processing. OFO maintains custody of detainees only for the short period  
2 necessary to transfer a detainee to another federal, state, or local law enforcement  
3 agency, or less commonly, release the individual. Most commonly, OFO maintains  
4 custody over inadmissible aliens while they await either expedited removal,  
5 withdrawal, or transfer to ICE, or, in the case of UACs, to HHS custody. At times,  
6 OFO may transfer UACs to the custody of Border Patrol in a nearby sector for  
7 processing given the higher volume of processing performed by Border Patrol and, in  
8 certain sectors, the availability of a Centralized Processing Center (CPC).  
9

10  
11  
12 37. All inadmissible accompanied and unaccompanied alien children are  
13 processed in a structured manner. Upon arrival, subjects begin in a primary inspection  
14 and are then referred to secondary inspection at the POE where additional screening  
15 occurs. Generally, in secondary inspection, each inadmissible alien is initially  
16 examined for contraband or anything that may harm the alien, officers, or the traveling  
17 public, in a manner that is appropriate for the juvenile's age. The TEDS Policy limits  
18 more invasive searches of juveniles unless consent is given by the child's parent or  
19 legal guardian, or in the case of a UAC, unless the UAC consents and CBP legal  
20 counsel is consulted. Any baggage or property is also examined in order to avoid  
21 concealed contraband entering the POEs. This procedure exists to ensure officer and  
22 detainee safety. After initial examination, children are permitted to retain their outer  
23 layers of clothing. All personal property that is removed from an alien is labeled using  
24  
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1 a baggage tag and stored in an area that is not accessible to detainees. Personal property  
2 is generally returned when the aliens leave the POE.  
3

4 38. During the inspection, biographical information is obtained, and  
5 biometrics are taken and entered into CBP's secondary processing system. All  
6 encounters of accompanied and unaccompanied alien children are reported to the duty  
7 supervisor(s) and receive priority attention. After an alien is encountered and detained,  
8 their immigration status is determined. Once a processing determination is made, all  
9 pertinent documents are completed including the preparation of any arrest report(s),  
10 the service of immigration forms, consular notifications, and communication with  
11 family members, as appropriate.  
12  
13  
14

15 39. Officers record the location of any parents/legal guardians, as well as the  
16 location and contact information for any relatives in the United States for all  
17 accompanied and unaccompanied alien children. For UACs that information is made  
18 available to HHS/ORR.  
19  
20

21 40. Detainees brought inside to the processing area are placed into hold  
22 rooms based on a number of factors including age, sex, whether they are traveling as  
23 a family unit, and if they are suspected of a serious crime.  
24

25 41. Children are separated from unrelated adults as quickly as operationally  
26 possible. Families are customarily segregated from the rest of the detained population  
27 and every effort is made to maintain family unity keeping in mind limitations on space  
28

1 and other operational concerns including the sex and age of the minor and any  
2 accompanying adult.  
3

4 42. OFO policy implementing the TVPRA requires that all UACs be  
5 screened to determine whether they: are a national or habitual resident of a contiguous  
6 territory; are able to make an independent decision to withdraw his or her application  
7 for admission; have a fear of return to their home country; and/or have been a victim  
8 of a severe form of human trafficking or are at risk of being trafficked. OFO also  
9 encourages POEs to prominently display a poster explaining the dangers of human  
10 trafficking, in both English and Spanish, to further encourage potential trafficking  
11 victims to self-report, depending on the feasibility for each POE.  
12  
13  
14

#### 15 OFO Custody Conditions

16

17 43. OFO generally meets the same standards for custody that are found in  
18 Border Patrol facilities with some important distinctions based on the very different  
19 environments in which OFO operates. Because some POEs may have significant space  
20 limitations, not all juveniles in OFO custody are detained in traditional hold rooms or  
21 pods. Many POEs do not have space for such facilities. Accordingly, to ensure that  
22 juveniles are detained in the least restrictive setting appropriate for their age and needs  
23 and detained separately from unrelated adults, juveniles may be detained in areas  
24 ordinarily used for secondary processing, or other temporary hold areas. At times this  
25 may include an empty office or other similar space. This is done to ensure that, when  
26  
27  
28

1 juveniles must be detained, they are as comfortable as possible and can be monitored  
2 appropriately. As with Border Patrol, it is important for OFO to have operational  
3 flexibility to fulfill its obligations to care for minors in the wide variety of  
4 environments in which OFO operates.  
5

6  
7 44. Consistent with the FSA, and the TEDS Policy, all holding rooms afford  
8 children access to: toilets and sinks; drinking water and food (this includes meals  
9 and/or snacks as appropriate depending on the length of stay); emergency medical  
10 assistance; adequate temperature control and ventilation; and adequate supervision to  
11 protect children from others.  
12

13  
14 45. While some larger POEs may have meal contracts, at many POEs OFO  
15 utilizes purchase cards to buy meals and/or contracted vendors or services to provide  
16 nourishment for aliens detained in CBP custody. Children are offered at least three  
17 meals a day, consisting of at least two varied hot meals daily. All menu items are stored  
18 in appropriate, temperature-controlled, insulated and sealed containers. Meals  
19 requiring refrigeration, if kept onsite, are stored in refrigerators, and meals requiring  
20 preparation are either made-to-order or cooked in microwave ovens depending on the  
21 capabilities of the particular POE. Special meals are purchased when a detainee cannot  
22 consume what is on the menu for religious or medical reasons. Snacks and juice are  
23 available to all detainees between meals. Additionally, between meals children have  
24 open access to snacks such as cookies, cereal bars, graham crackers, pudding, and  
25  
26  
27  
28

1 crackers. Baby formula is also procured and provided to individuals with infants. All  
2 holding rooms/areas have potable water readily accessible for detainees in custody  
3 whether through drinking fountains or with purchased bottled water and  
4 accompanying cups.  
5

6  
7 46. OFO facilities maintain or can purchase as needed a supply of clothing,  
8 towels, baby products, and personal hygiene items. Clean age-appropriate clothing,  
9 including undergarments and socks, are either available or can be purchased and  
10 distributed as needed.  
11

12  
13 47. Children are also provided with personal hygiene items. The POEs  
14 purchase disposable toothbrushes, toothpaste, shampoo, soap, deodorant, and feminine  
15 hygiene products. Where children must sleep in custody, the POEs will make every  
16 effort to give detainees some comfort to sleep while in custody including the use of  
17 folding mats, foam sleeping mats, cots, and/or blankets to provide protection from the  
18 floor.  
19  
20

21 48. The POEs ensure that each detainee is able to maintain acceptable  
22 personal hygiene practices. Where feasible, each child is provided a clean towel,  
23 shampoo, soap and a shower every 48 hours. Additionally, they are given a disposable  
24 toothbrush and toothpaste. Children detained for more than 48 hours have the  
25 opportunity to change clothes after showering. Underwear is available or can be  
26 purchased to be provided to children who do not have a change. The POEs also provide  
27  
28

1 male and female detainees personal hygiene items appropriate for their sex.

2  
3 49. Many holding rooms are designed with a readily accessible bathroom and  
4 are wall screened to allow children privacy when using the facilities but still ensure  
5 they are monitored and protected. Where children are not held in holding rooms they  
6 are given access to bathrooms as needed. Waste baskets/cans are provided in bathroom  
7 areas. Also, soap or hand sanitizer are provided to allow children to wash off their  
8 hands before eating or after utilizing the facilities.  
9  
10

11 50. Consistent with the FSA and the TEDS Policy, all areas where children  
12 are temporarily held maintain a temperature between 66 and 80 degrees Fahrenheit  
13 and have adequate temperature control monitoring and acceptable ventilation. POEs  
14 have been provided with infrared digital thermometers to further ensure that the hold  
15 rooms' temperature is properly regulated.  
16  
17

18 51. POEs ensure that holding rooms are regularly cleaned and sanitized.  
19 Cleaning of hold rooms is conducted a minimum of once per shift. POEs follow the  
20 same basic procedure: cleaning and sanitizing the hold rooms and processing area,  
21 emptying trash cans, and resupplying the hold room toilet areas.  
22  
23

24 52. During every shift turnover, a walkthrough and review is conducted of  
25 the hold rooms and the general facility by a duty supervisor. CBP officers or contract  
26 staff are assigned to monitor the hold rooms to ensure that they are free of any hazards,  
27 and to monitor temperature and cleanliness, and ensure that hold rooms are properly  
28

1 stocked with toilet paper, soap, sanitizers, and other supplies as needed.

2  
3 53. The lights in the processing area and hold rooms normally remain on at  
4 all times while children are in CBP custody for security reasons and due to operational  
5 necessity. Officers must be able to maintain a line of site over the holding rooms to  
6  
7 ensure the safety and security of the detainees.

8 54. CBP Officers serve the Notice of Rights and Request for Disposition  
9  
10 (Form I-770) on all children apprehended at a port of entry, whether they are  
11 accompanied or unaccompanied.

12 55. All children are advised that they have the rights to: use the telephone,  
13  
14 have a hearing before an immigration judge, and be represented by an attorney in those  
15 proceedings. If the child is less than 14 years of age or unable to understand the notice,  
16  
17 the notice is read and explained by an officer to the child and/or an accompanied parent  
18 in a language he or she understands, or is explained through a contracted interpreter  
19  
20 service. The signed I-770 form is placed in the alien's A-file.

21 56. POEs are not designed for long-term care and detention. Every effort is  
22  
23 made to promptly process, transfer or remove those in custody as expeditiously as  
24 possible in accordance with the FSA and the TEDS Policy.

25 Office of the Chief Medical Officer (OCMO)

26  
27 57. OCMO, within CBP's Operations Support component at CBP  
28 headquarters, is responsible for, among other things, safeguarding the health of



1 persons in CBP custody and countering health security threats at our nation's borders.  
2 OCMO serves as the principal health and medical advisory office for CBP, and  
3 employs a core staff of medical professionals to provide consistent, safe, and effective  
4 medical support to CBP operations and aliens in CBP's custody. OCMO provides  
5 enterprise-wide direction, oversight, and management of CBP health/medical  
6 activities and programs, and provides medical support to operations. OCMO is also  
7 CBP's health and medical representative to DHS and other Federal, state, and local  
8 organizations, and coordinates and collaborates with all CBP components, including  
9 senior leadership, regarding medical-related initiatives and programs. OCMO  
10 encompasses several divisions and uses contracts to provide medical screening. The  
11 OCMO Border Health System (BHS) Division is the program office responsible for  
12 the operational requirements on the medical services contracts. The BHS Division also  
13 manages technology and information systems utilized to capture all electronic medical  
14 records.

21 58. It is the policy of CBP that all aliens in custody receive appropriate  
22 medical support in accordance with applicable authorities, regulations, standards, and  
23 policies. CBP provides enhanced medical support efforts for aliens in custody. CBP's  
24 enhanced medical support approach includes the identification of Medical Priority  
25 Facilities (MPF) using an operational risk management methodology. An MPF is a  
26 CBP facility that has been identified to have a need for on-site medical support due to  
27  
28

1 the number of persons in custody at those locations. CBP considers essential elements  
2 of volume (number of persons apprehended/in custody), demographics (priority  
3 emphasis on juveniles), FMUAs, duration of TIC, and remoteness of a facility and  
4 availability of local medical care in an operational risk management methodology for  
5 designating an MPF. Designations of MPFs will change as circumstances on the  
6 border change. For any location identified by CBP as a MPF, CBP provides medical  
7 care through a Medical Services Contract (MSC) provider, which is currently Loyal  
8 Source Government Services (LSGS). At MPFs, the MSC provides frontline medical  
9 staff, which includes advanced practice providers (APPs), such as nurse practitioners  
10 and physician assistants, and medical support staff, such as emergency medical  
11 technicians, who provide medical care to persons in custody. The MSC frontline  
12 medical staff are remotely supported by supervising physicians, pediatric advisors and  
13 Patient Safety Risk Managers (PSRMs). The physician support provides APPs with  
14 virtual consultation capabilities for complex medical conditions and concurrence with  
15 treatment for higher risk patients. PSRMs conduct regular site visits to monitor patient  
16 safety standards, protocols, training and medical supply inventory.

17  
18 59. As contractors, MSC employees are not directly supervised by CBP  
19 employees. CBP employees do not direct the day-to-day operations of the MSC, nor  
20 do they have control over the contractor's medical decisions. However, CBP OCMO  
21 is responsible for oversight of the contract itself, including through setting substantive

1 standards and requirements, and for monitoring compliance with those standards. CBP  
2 OCMO undertakes this oversight primarily through setting policies for the  
3 implementation of CBP medical care, such as through development of the Elevated in  
4 Custody Medical Risk policy and the Medical Process Guidance.  
5

6  
7 60. As required by the CBP Medical Process Guidance, all children in CBP  
8 custody receive a Health Interview upon their intake into a holding facility. The Health  
9 Interview is a tool for CBP personnel and/or the MSC to record the observation and  
10 identification of potential medical issues for persons in custody. Children under the  
11 age of 12, and those who are identified as having a potential medical issue, then receive  
12 a Medical Assessment. The Medical Assessment is a tool used by medically trained  
13 personnel to assess and confirm potential medical issues of aliens in CBP custody.  
14 Additionally, while CBP is not equipped to provide comprehensive mental health care,  
15 children are asked basic mental health questions during their health interview, to  
16 identify acute or emergent mental health issues. Children with complex or urgent  
17 medical issues are transferred to the local health system.  
18  
19  
20  
21

22 CBP's Layered and Integrated Monitoring Approach  
23

24 61. CBP has implemented many components of a multi-layered and  
25 integrated monitoring program designed to ensure CBP's compliance with its custody  
26 standards and other requirements, including the requirements of the FSA. This  
27 includes real time monitoring by operators in the field and at the headquarters level,  
28

1 comprehensive medical monitoring systems, and the Juvenile Coordinator Division  
2 (JCD) of the Office of Accountability, which conducts regular inspections at CBP  
3 facilities.  
4

5 62. At the headquarters level, both Border Patrol and OFO employ daily  
6 reports, live dashboards, and specialized coordination teams to monitor TICs and  
7 facility capacity, ensuring compliance with legal requirements and safe housing of  
8 minors and family units. Overcrowding and prolonged custody cases are quickly  
9 identified, and actively managed through decompression strategies, transfers, and  
10 executive briefings to maintain operational efficiency and legal compliance. At the  
11 field level, facility management is constantly monitoring TICs, with special attention  
12 given to UACs and family units. The provision of amenities also is constantly tracked  
13 and monitored by field personnel using CBP systems of record as well as eyes-on  
14 oversight of detainees.  
15

16 63. With regard to the provision of medical care, OCMO BHS is building a  
17 four-phase Compliance Analysis Process (CAP) that will monitor compliance with  
18 medical requirements in a number of ways, including a layered approach of random  
19 patient chart reviews, unannounced site visits, and real-time juvenile patient  
20 monitoring dashboards. Phases I to III of the CAP have been completed. Phase I  
21 includes random, unannounced site visits and is already in place. During these site  
22 visits, BHS personnel observe medical staffing contract requirements and conduct  
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24  
25  
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28

1 interviews with providers and medical support personnel, patients, and facility  
2 leadership. Additionally, BHS conducts inspection of the medication administration  
3 process, patient white boards, “at-risk” alerts, and general patient process flows.  
4 Random and unannounced site visits of MPFs allow BHS personnel to observe the  
5 process and generate a report of findings for corrective action. A standardized site visit  
6 checklist provides continuity in the analysis of the medical process. In FY2024,  
7 OCMO conducted 158 qualitative site visits to field locations to assess care. A planned  
8 addition to Phase I of the CAP will be to generate a “report card” that assigns a score  
9 to each required element of the medical process. This “report card” will be given to  
10 the MPF and MSC leadership.

15 64. Phase II of the CAP involves the real-time monitoring of juvenile  
16 dashboards with patient level information, which allows BHS staff to identify all  
17 juveniles in custody for more than 12 hours without a medical assessment, all juveniles  
18 in custody for 5 or more days without a repeat assessment, all juveniles with an  
19 Elevated in Custody Medical Risk level of “high risk” based on his or her diagnosis,  
20 and all juveniles who have been referred to the hospital. This dashboard monitoring  
21 by BHS personnel assists with ensuring that no juvenile is missed in the medical  
22 process and allows action while the patient is still in custody. Any identified  
23 deficiencies are addressed through corrective action reports that the MPF and/or the  
24 MSC are required to provide within 30 days.

1           65. Phase III of the CAP consists of random chart reviews. These reviews  
2  
3 include selecting 10 or more sample juvenile charts and tracking those for the entire  
4 time the juvenile is in CBP custody, from apprehension to release, assessing for  
5 medical process compliance, to determine whether there are any gaps within the CBP  
6 and the MSC operation. This chart review also generates a “report card” that is  
7 provided to the MPF and MSC leadership and is used for accountability of the  
8 contractor in their performance rating. If MPF and MSC identify any deficiencies,  
9 corrective action will be required within 30 days and the same sample will be used for  
10 a Medical Quality Management (MQM) review. An MQM review looks at the clinical  
11 medical care rendered by the contracted medical staff to ensure it is appropriate and  
12 compliant with CBP medical protocols. Phase III also involves automation tools for  
13 Medical Protocol monitoring to “flag” areas in real time, specifically for medical  
14 notifications; enhanced medical monitoring; medication reviews; medical quality  
15 management; medical documentation, communication, and continuity of care.  
16  
17  
18  
19  
20

21           66. OCMO currently manages its compliance program through combinations  
22 of manual and semi-automated systems. Phase IV of the CAP will be the development  
23 of a Compliance Program Management Information System (CPMIS) that will fully  
24 automate the management of OCMO’s compliance process from the beginning to end.  
25 The CPMIS is expected to be operational by the end of FY 2025. CPMIS is a central  
26  
27  
28 system (one-stop shop) with a life-cycle approach to managing OCMO’s internal

1 compliance program. Compliance reports and recommendations from outside OCMO  
2 will be managed in the same system to facilitate a fully integrated compliance  
3 program. CPMIS will be designed to cyclically manage inspections, analyze results of  
4 the inspections, facilitate the development of standardized reports and appropriate  
5 corrective actions, implementation, monitoring, and evaluation of corrective actions.  
6 This system will facilitate transparency and allow all major stakeholders to work and  
7 view pertinent information and required actions in a common platform.  
8  
9  
10

11 67. Finally, JCD evaluates CBP compliance with the FSA and related CBP  
12 policies. JCD has delivered 7 annual and 12 interim reports to the *Flores* court since  
13 2017. These reports summarize Compliance Reviews, census information, and updates  
14 from CBP components. Over the past 7 JCD Annual Court Reports submitted, JCD  
15 has generally determined that CBP is substantially compliant with the FSA.  
16  
17

18 68. JCD has also conducted over 280 compliance reviews of CBP facilities  
19 where people are held since 2016. JCD conducts announced and unannounced  
20 compliance reviews in approximately 20 locations every fiscal year, covering multiple  
21 facilities in each location. JCD utilizes protocols based on measurable criteria to  
22 ensure reviews are standardized. The areas reviewed include physical, data, medical,  
23 food, caregiver, and interviews. These reviews are a snapshot in time and limited in  
24 scope but provide an additional layer of assessment related to a facility's overall  
25 compliance with applicable standards. JCD issues a supporting Dashboard Report to  
26  
27  
28

1 facility and headquarters management and requests the facility to respond with  
2 corrective actions taken for identified issues within 30 days of issuance of the  
3 Dashboard Report. The JCD Director briefs Sector Chiefs on the results.  
4

5 69. JCD also conducts *Flores* Implementation Training (FIT) to CBP sectors  
6 and field offices. FIT was developed in FY24 to provide holding facilities an overview  
7 of the FSA and related CBP policy requirements from a compliance review  
8 perspective. FIT also provides useful tools to manage these requirements and a walk  
9 through of each facility pointing out areas of concern. JCD has conducted 26 FIT  
10 sessions reaching 251 CBP personnel. FIT is included in the FY25 CBP Priorities.  
11  
12

13 70. Finally, JCD conducts Town Halls in order to deliver a clear  
14 understanding of CBP policy requirements to personnel in the field involved with the  
15 care and custody of juveniles. Speakers include subject matter experts from OCC,  
16 OCMO, OFO, and Border Patrol. There is an average attendance of more than 200  
17 personnel per event, and the most recent town hall in May 2025 had nearly 300  
18 participants.  
19  
20

21 71. JCD is part of the Office of Accountability which also houses CBP's  
22 Management Inspection Division (MID). While JCD focuses on inspections related to  
23 compliance with the FSA, even in the absence of the FSA both JCD and MID have the  
24 capability to conduct inspections related to compliance with any of CBP's policies,  
25 including the TEDS Policy. CBP takes seriously its obligations to keep minors safe in  
26  
27  
28



1 its custody, regardless of the existence of the FSA, and expects that it will continue to  
2 use its resources within the Office of Accountability to meet these obligations even if  
3 the FSA were terminated.  
4

5  
6  
7 I declare, under penalty of perjury, that the foregoing is true and correct to the  
8 best of my knowledge, information, and belief.  
9

10  
11 Executed on this 21st day of May, 2025.  
12

13 

14 John Modlin  
15 Acting Deputy Commissioner  
16 U.S. Customs and Border Protection  
17 U.S. Department of Homeland Security  
18  
19  
20  
21  
22  
23  
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27  
28

# Exhibit B

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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES; <i>et al.</i> ,	)	Case No. CV 85-4544
	)	
Plaintiffs,	)	<b>DECLARATION OF MARC</b>
	)	<b>ROSENBLUM</b>
v.	)	
	)	
PAMELA BONDI, Attorney General	)	
of the United States, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

---

**DECLARATION OF MARC ROSENBLUM**

I, Marc Rosenblum, do hereby declare and state as follows:

1. I am the Executive Director of the Office Homeland Security Statistics (OHSS) employed by the United States Department of Homeland Security (“DHS”). OHSS was created in 2023 and succeeds the Office of Immigration Statistics. The facts set forth herein are of my own personal knowledge, or known to me based on information and belief, and, if sworn, I could and would testify competently thereto.

2. OHSS analyzes and disseminates Department of Homeland Security (DHS) data and statistics. It provides reports to interagency partners, Congress, and the public.

3. OHSS analyzed family unit encounters by CBP dispositions and by whether or not encounters had resulted in USCIS fear screening for FY2021-FY2024 and found the following data (table on next page):

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**Nationwide Encounters of Family Unit Individuals by Selected Dispositions: Fiscal Years 2021-2024**

	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2021-FY2024</b>
Total FM Encounters <sup>1</sup>	483,850	614,020	993,940	996,070	3,087,890
Releases into the U.S. without Fear Screening	374,130	481,520	853,100	842,740	2,551,490
Notice to Appear (NTA) <sup>2</sup>	206,820	219,870	596,710	693,080	1,716,480
Parole <sup>3</sup>	37,030	246,020	247,470	149,460	679,980
Release <sup>4</sup>	130,280	15,640	8,920	210	155,040
All Others <sup>5</sup>	109,720	132,500	140,840	153,330	536,390

Notes: Results based on OHSS Enforcement Lifecycle methodology as of October 31, 2024. Encounters include USBP apprehensions and OFO inadmissibility determinations by year of encounter. Table is event-based, so noncitizens encountered on multiple occasions appear in the table multiple times.

<sup>1</sup> All Family unit individual (FMs) encounters regardless of reported CBP disposition.

<sup>2</sup> Includes FMs with a reported CBP disposition of NTA with no credible fear or reasonable fear record in the USCIS APSO system.

<sup>3</sup> Includes FMs with a reported CBP disposition of parole or an individual parole program.

<sup>4</sup> Includes FMs with a reported disposition of release or not in custody.

<sup>5</sup> Includes FMs not released into the United States or only released following a credible fear screening.

Source: DHS Office of Homeland Security Statistics Enforcement Lifecycle. Results based on source data as of February 28, 2025.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21<sup>st</sup> day of May, 2025, at Washington, DC.

\_\_\_\_\_  
Marc Rosenblum

Executive Director

Office of Homeland Security Statistics

Department of Homeland Security

# Exhibit C



NEWS - GLOBAL | 12 SEPTEMBER 2023

# US-Mexico Border World's Deadliest Migration Land Route

**Geneva/Berlin/San José** – The International Organization for Migration (IOM) documented 686 deaths and disappearances of migrants on the US-Mexico border in 2022, making it the **deadliest** land route for migrants worldwide on record.

The figure represents nearly half of the 1,457 migrant deaths and disappearances recorded throughout the Americas in 2022, the **deadliest** year on record since IOM's [Missing Migrants Project](#) (MMP) began in 2014.

The data comes from [IOM's MMP annual overview](#), which underscores the growing death toll and increasing risks that migrants face throughout the region. These figures represent the lowest estimates available as many more deaths are likely to go unrecorded due to lack of data from official sources.

"These alarming figures are a stark reminder of the need for decisive action by States," said Michele Klein Solomon, IOM Regional Director for Central and North America and the Caribbean. "Enhancing data collection is crucial. Ultimately, what is needed is for countries to act on the data to ensure safe, regular migration routes are accessible."

Although the data shows that deaths and disappearances in the US-Mexico border decreased by 6 per cent from the previous year, the 2022 figure is likely higher than the available information suggests, due to missing official data, including information from Texas border county coroner's offices and the Mexican search and rescue agency.

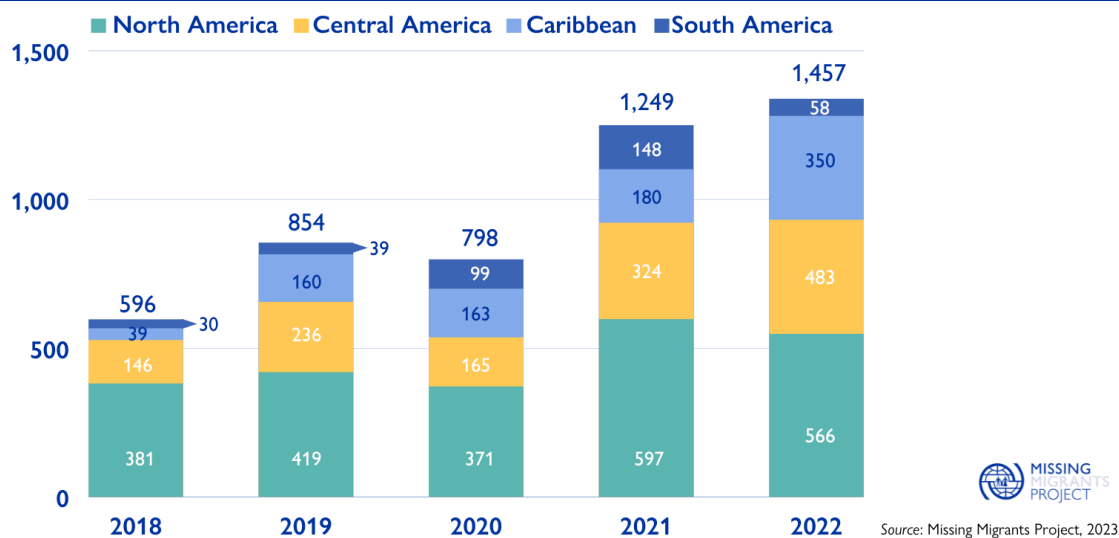
Nearly half (307) of the deaths on the United States-Mexico border were linked to the hazardous crossing of the Sonoran and Chihuahuan Deserts, far more than other desert regions where irregular migration is prevalent. At least 212 people died in the Sahara Desert in 2022, but the remote nature of such areas means that data is likely incomplete.

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One of the most concerning trends was the increase in deaths on migration routes in the Caribbean, with 350 documented in 2022 compared to 245 in 2021 and fewer than 170 recorded in all prior years. People from the Dominican Republic, Haiti, and Cuba accounted for the highest number of migrant deaths in the Caribbean.

The Darien, an inhospitable jungle border crossing between Panama and Colombia, saw 141 documented migrant deaths in 2022. The remote and dangerous nature of this area and the presence of criminal gangs along the route means that this figure may not represent the actual number of lives lost.

Surveys of people who made the crossing conducted by IOM's Displacement Tracking Matrix revealed that 1 in 25 respondents reported someone they were traveling with had gone missing. While these surveys were not representative, they are of grave concern considering that 250,000 people arrived in Panama via the Darien in 2022, and nearly 340,000 people have made the journey in 2023.

"The fact that we know so little about migrants who disappear in the Americas is a grim reality," said Marcelo Pisani, IOM Regional Director for South America. "The impacts on the families left behind to search endlessly for a lost loved one are profound."

These numbers reflect the fatal consequences of the lack of safe and regular mobility options. IOM works with governments and stakeholders in the Americas to develop regular, safe and dignified pathways for migrants. Addressing the root causes of irregular migration, enhancing humanitarian assistance, and providing better protection for vulnerable groups are essential steps in safeguarding the lives of migrants seeking a safer future.

The full report on 2022 migrant deaths in the Americas is available [here](#).

Missing Migrants Project is a flagship initiative of the Global Migration Data Analysis Centre (GMDAC) within of the IOM's Global Data Institute based in Berlin. The latest Missing Migrants Project data on the Americas can be found at <https://missingmigrants.iom.int/region/americas>

\*\*\*

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

PAMELA BONDI, Attorney General of  
the United States, *et al.*,

Defendants.

Case No. 2:85-cv-04544-DMG

Chief District Judge Dolly M. Gee

**SUPPLEMENTAL DECLARATION OF TOBY BISWAS**

I, **Toby Biswas**, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Director of the Division of Unaccompanied Alien Children (UAC) Policy in the Office of Refugee Resettlement (ORR), UAC Bureau, an entity within the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

2. I have held various roles within ORR since joining the agency in November 2009, and I have held my current role since April 2023. My responsibilities encompass the development and implementation of ORR's policies and procedures concerning the care and custody UAC. In this capacity, I am responsible for ensuring ORR's implementation of and compliance with programmatic policy prerogatives and statutory responsibilities, including those arising under the Homeland Security Act of 2002 (HSA), 6 U.S.C. § 279; Trafficking Victims

1 Protection Reauthorization Act of 2008 (TVBRA), 8 U.S.C. § 1232; and ORR's  
2 regulations, including the Foundational Rule, 45 CFR part 410.<sup>1</sup>

3 3. This declaration is based upon my personal knowledge, information acquired  
4 in the course of performing my official duties, information contained in the records  
5 of ACF and ORR, and information conveyed to me by current agency employees  
6 and contractors. Further, I am generally familiar with the facts and circumstances  
7 underlying ORR's promulgation of the Foundational Rule, this Court's order, dated  
8 June 28, 2024, partially and conditionally terminating the Flores Settlement  
9 Agreement (FSA) as to HHS, and ORR's recent policy revisions in accordance with  
10 that order.

11 Updates to UAC Bureau Policy Guide

12 4. Before FY2012, an average of 6,000 to 8,000 UACs were typically placed  
13 into ORR custody each year.<sup>2</sup> In FY2012, the Department of Homeland Security  
14 referred 13,625 UACs to ORR. In FY2023, ORR received 118,938 referrals.

15 Updates to UAC Bureau Policy Guide

16 5. On June 28, 2024, this Court partially and conditionally terminated the FSA  
17 as to HHS. The Court terminated the FSA, except paragraphs 28A, 32, and 33, and  
18 the provisions pertaining to secure, heightened supervision, and out-of-network  
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20 <sup>1</sup> ORR policies with respect to UAC are also embodied in the ORR UAC  
21 Bureau Policy Guide ("UAC Policy Guide"), which is publicly available on ORR's  
22 website at [https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide)  
23 [policy-guide](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide).

24 <sup>2</sup> See HHS, Administration for Children and Families, Office of Refugee  
25 Resettlement, Unaccompanied Alien Children Program, Fact Sheet (May 2014),  
26 available at [https://acf.gov/sites/default/files/documents/orr/](https://acf.gov/sites/default/files/documents/orr/unaccompanied_childrens_services_fact_sheet.pdf)  
27 [unaccompanied\\_childrens\\_services\\_fact\\_sheet.pdf](https://acf.gov/sites/default/files/documents/orr/unaccompanied_childrens_services_fact_sheet.pdf) (viewed May 19, 2025),  
28 attached as Ex. D-1; ORR Fact Sheet, Referrals, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data> (viewed May 19, 2025),  
attached as Ex. D-2.

1 facilities. Regarding such placements, the Court ruled that the Foundational Rule  
2 failed to implement the FSA by: (1) “appear[ing] to impermissibly allow isolated or  
3 petty offenses to be considered in the decision to place an unaccompanied child in a  
4 heightened supervision facility”; (2) “appear[ing], impermissibly, to allow  
5 placement in a heightened supervision facility solely because a child is ready to  
6 ‘stepdown’ from a secure facility”; and (3) “fail[ing] to provide substantive  
7 protections for the children placed at OON facilities,” and failing to ensure that OON  
8 placements are governed by the same standards as in network providers.

9 6. On May 19, 2025, ORR published updates to its Policy Guide to align them  
10 with the Court’s June 28, 2024 order as to its findings pertaining to secure,  
11 heightened supervision, and out-of-network facilities.

12 7. First, ORR updated its Policy Guide at section 1.2.4<sup>3</sup> to delete reference to  
13 isolated and petty offenses as a basis for placement in a heightened supervision  
14 facility. Instead, the Policy Guide now explains that, in determining whether to place  
15 an unaccompanied alien child in such a facility, ORR will consider if the child “has  
16 a non-violent criminal or delinquent history not warranting placement in a secure  
17 facility but which evidences a behavioral concern that requires an increase in  
18 supervision.”

19 8. Second, ORR updated its policy at section 1.2.4 to remove text that previously  
20 provided that in determining whether to place a child in a heightened supervision  
21 facility, ORR considers if the child “[i]s ready for step-down from a secure  
22 facility...”

23 9. ORR previously published an update to the Policy Guide in August 2024 to  
24 clarify, at section 1.4.2,<sup>4</sup> to clarify that, “Unaccompanied children placed in a secure  
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26 <sup>3</sup> Available at: [https://acf.gov/orr/policy-guidance/unaccompanied-children-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.2.4)  
27 [program-policy-guide-section-1#1.2.4](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.2.4).

28 <sup>4</sup> Available at: [https://acf.gov/orr/policy-guidance/unaccompanied-children-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.4.2)  
[program-policy-guide-section-1#1.4.2](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.4.2).



1 facility (including an RTC) are not automatically stepped down to a heightened  
2 supervision facility.” The revision further clarified that ORR evaluates each child’s  
3 case and determines the least restrictive setting that meets their individual needs,  
4 which may be a heightened supervision facility or a non-restrictive level of care  
5 (such as a shelter). ORR believes that this previous update addressed the Court’s  
6 concerns regarding step-downs from secure facilities by making clear that children  
7 will not automatically be placed in heightened supervision simply because they are  
8 ready to be stepped down from a secure placement. However, ORR has published  
9 additional updates described above at Paragraph 7 to further clarify the process.  
10 ORR has also added a footnote to Policy Guide section 1.2.4, providing explicitly  
11 that “...Heightened Supervision Facility placement requirements conform to the  
12 standards that the U.S. District Court concluded were applicable to such placements  
13 under Paragraph 21A of the Flores Settlement Agreement. *Flores v. Garland*, No.  
14 CV 85-4544-DMG (AGRX), 2024 WL 3467715, at \*6 (C.D. Cal. June 28, 2024)  
15 (applying paragraph 21 to “medium security” facilities).”

16 10.Third, ORR updated its policies with respect to OON facilities, in accordance  
17 with the Court’s directive that such facilities should be included in the provisions of  
18 the rule that governs in-network facilities.

19 11.As an initial matter, ORR revised the definition of OON placement in the  
20 Policy Guide. The revised definition stipulates that “OON placements must  
21 generally adhere to or arrange the standards listed in [section 3.3] of the Policy  
22 Guide.” (Section 3.3 corresponds with Exhibit 1 of the FSA, now codified in the  
23 Foundational Rule at 45 CFR 410.1302 and 1307). The revised definition also  
24 clarifies that children placed in OON facilities will generally receive or have  
25 arranged the services established for in-network ORR care provider facilities,  
26 including the development of behavior management strategies. However, as  
27 consistent with a child’s best interests, ORR may determine, in consultation with  
28 independent experts, the extent to which a service may be provided for or arranged.



1 ORR further clarifies that in general, it will not place a UAC in an OON facility if it  
2 determines that a service which is required for the child's best interests cannot be  
3 provided at the OON facility.

4 12.ORR also updated Policy Guide section 3.1,<sup>5</sup> adding, "Likewise, OON  
5 facilities must provide all services required of in-network care provider facilities, as  
6 discussed at Section 1.4.6 Residential Treatment Center and Out-of-Network,  
7 subject to the exceptions provided in the policy." In addition, ORR updated section  
8 1.3.2 of the Policy Guide<sup>6</sup> by adding that "OON facilities and providers are generally  
9 subject to the same standards of care and service delivery as in-network providers."

10 13.ORR also updated UAC Policy Guide Section 1.4.6 Residential Treatment  
11 Center and Out-of-Network Placements<sup>7</sup> to make clear that, as a general principle  
12 and wherever feasible, the same standards applicable to in-network providers should  
13 be applied to OON placements. These standards and services encompass healthcare,  
14 food, hygiene, needs assessments, education, recreation, orientation, religious  
15 services, contact with family, and other essential services as described at Policy  
16 Guide Section 3.3 Care Provider Required Services. Additionally, this Policy Guide  
17 update clarifies that behavior management policies, as described in the Foundational  
18 Rule at Policy Guide Section 3.3.13 Behavior Management (which are consistent  
19 with the Foundational Rule at 45 CFR 410.1305), will apply to OON placements.

20 14.ORR also updated section 1.4.6 of the Policy Guide to incorporate specifics  
21 as to how it will ensure UACs in OON facilities are included under provisions of the  
22 Foundational Rule and Policy Guide that govern in-network facilities. For example,  
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25 <sup>5</sup> Available at: [https://acf.gov/orr/policy-guidance/unaccompanied-children-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.1)  
26 [program-policy-guide-section-3#3.1](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.1)

27 <sup>6</sup> Available at: [https://acf.gov/orr/policy-guidance/unaccompanied-children-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.3.2)  
28 [program-policy-guide-section-1#1.3.2](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.3.2)

<sup>7</sup> Available at: [https://acf.gov/orr/policy-guidance/unaccompanied-children-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.4.6)  
[program-policy-guide-section-1#1.4.6](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.4.6).

1 ORR clarified that a case manager at an ORR in-network facility will administer  
2 case management services for a child placed in an OON facility. This involves  
3 maintaining weekly contact with the child's OON facility to ensure the case manager  
4 and assigned ORR federal staff receive weekly updates on the child's progress. ORR  
5 has also added the following provision: "For children with identified disabilities who  
6 have an Individualized Section 504 Service Plan...ORR will ensure that the services,  
7 supports, and reasonable accommodations and modifications responsive to the  
8 child's disability-related needs which are specified in the child's Individualized  
9 Section 504 Service Plan Disability Plan are provided at the OON placement."

10 15. ORR has further updated Policy Guide section 1.4.6 to expressly provide that  
11 it "does not place an unaccompanied alien child at an OON facility if it determines  
12 that a service which is required for the child's best interests, including appropriate  
13 behavior management standards, cannot be provided at the facility."

14 16. ORR notes that when it houses children in OON facilities, it does so based on  
15 agreements with those facilities pertaining to specific children, based on their ability  
16 to meet the child's individualized needs (e.g., in a manner that ORR's in-network  
17 facilities may not have the capacity to provide, but would be in the child's best  
18 interest). As a result, OON facilities are not funded in the same way as in-network  
19 facilities. In-network facilities are funded via cooperative agreements or (in the case  
20 of Emergency or Influx Facilities) contracts, as described in the Federal Grant and  
21 Cooperative Agreement Act, 31 U.S.C. chapter 63. ORR identifies and funds in-  
22 network facilities, typically through a competitive process, generally to provide for  
23 the care and custody of unaccompanied alien children, rather than to care for specific  
24 children. As part of that process, ORR imposes requirements in the terms and  
25 conditions of the facility's federal award (e.g., organizing the recipient's physical  
26 space and human resources to meet ORR's minimum standards for the residential  
27 care of unaccompanied alien children). Because OON facilities are used by ORR to  
28 meet individual children's needs on a case-by-case basis, ORR is unable to use the

1 same process it would for in-network facilities. As a result, in applying this Court's  
2 June 28, 2024 order, ORR notes that it is not possible to guarantee the provision of  
3 all services and standards required at in-network facilities at all OON facilities, all  
4 of the time.

5 17. In recognition of this operational reality, ORR's recent policy revisions  
6 provide that, "Due to the operational realities of working with OON facilities, see  
7 generally Section 3.3, ORR will coordinate with the in-network care provider facility  
8 to provide the services to the child if feasible, or if the in-network facility is unable  
9 to provide the services, ORR may itself arrange for the services to the child." For  
10 example, if the OON placement does not provide group counseling services, the  
11 original in-network care provider facility would provide group counseling services  
12 to the child. If that is not feasible, ORR shall provide these services, as is practicable.

13 18. Together with paragraph 14 above, ORR intends through these updates to  
14 make clear that it generally applies the same standards that apply to in-network  
15 placements to OON ones, while accounting for operational realities and constraints  
16 reflecting the specialized nature of OON facilities and ORR's single-case  
17 agreements with such facilities for individual children (which do not operate under  
18 cooperative agreements or contracts with ORR, such that ORR could enforce  
19 specific requirements as it could with its in-network facilities).

20  
21 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
22 May 22, 2025.

23  
24 TOBY R.  
BISWAS -S

Digitally signed by TOBY  
R. BISWAS -S  
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# Exhibit D-1



## FACT SHEET

**SUBJECT:** U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program

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**The Division of Children's Services (DCS)** provides care and placement for children who come into the United States from other countries without an adult guardian. These children are referred to as **unaccompanied alien children (UAC)** in statutes. This program is in the Office of Refugee Resettlement, in the Administration for Children and Families, an operational division of U.S. Department of Health and Human Services.

Treating all children in its custody with dignity, respect and special concern for individual needs, DCS considers the best interests of the child in all placement decisions. DCS strives to provide the highest quality of care tailored to each unaccompanied child in order to maximize opportunities for success both while in care and when discharged from the program.

UAC generally leave their home countries to join family already in the United States, escape abuse, persecution or exploitation in the home country, or to seek employment or educational opportunities in the United States.

### **Background**

#### ***Legal basis for work with UACs:***

By law, HHS must provide for the custody and care of unaccompanied alien children. An unaccompanied alien child is a child who has no lawful immigration status in the United States; has not attained 18 years of age; and, with respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

Under the Homeland Security Act of 2002, Congress transferred the care and custody of UAC to HHS from the former Immigration and Naturalization Service (INS) to move towards a child welfare-based-model of care for children and away from the adult detention model. In the Trafficking Victims Protection Reauthorization Act of 2008, which expanded and redefined HHS's statutory responsibilities, Congress directed that UAC must "be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(b)(2).

#### ***Children Served:***

On average between 7,000 and 8,000 children are served annually in this program. In Fiscal Year 2012 (October 1, 2011 – September 30, 2012), this number jumped dramatically, with a total of 13,625 children served by ORR that year. Since that time, the overall increase has continued, resulting in 24,668 UAC referrals from DHS for the 12-month reporting period in FY2013, with the projection for FY2014 currently set at 60,000 referrals.

The children come primarily from Guatemala, El Salvador and Honduras. Most are over 14 and approximately three quarters of them are boys. In FY 2013, origin of youth in this program was as

follows: Guatemala (37%); El Salvador (26%); Honduras (30%); Mexico (3%); Ecuador (2%); and Other (3%). Over the years, the breakdown per country of origin has remained relatively constant.

Children are referred to ORR for placement by another federal agency, usually the Department of Homeland Security. Most children are placed into care because they were apprehended by immigration authorities while trying to cross the border; others are referred after coming to the attention of immigration authorities at some point after crossing the border. The average length of stay in the program is currently near 35 days. Of the children served, some 85% are reunified with their families.

Reasons why these minors have come to the United States include, but are not limited to, the following:

- To escape violence, abuse or persecution in their home countries.
- To find family members already residing in the United States
- To seek work to support themselves, their family, or their own children
- Were brought into the United States by human trafficking rings

The age of these individuals, their separation from parents and relatives, and the hazardous journey they take make them especially vulnerable to human trafficking, exploitation and abuse.

***Services Provided:***

Within HHS, the Office of Refugee Resettlement within the Administration on Children and Families is responsible for providing care to children referred by immigration authorities. Consistent with federal law, ORR/DUCS places children in the least restrictive setting that is in the best interest of the child, taking into account potential flight risk and danger to self and others. The majority of the youth are cared for through a network of state-licensed ORR-funded care providers that provide:

- Classroom education
- Mental and medical health services
- Case management
- Socialization and recreation
- Family reunification services that facilitate safe and timely release to family members or other sponsors that can care for them. We conduct home studies prior to release if safety is in question, and fund follow-up services for at-risk children after their release.

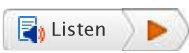
ORR's Division of Children's Services also assumes the following responsibilities:

- Overseeing the infrastructure and personnel of care provider facilities.
- Conducting on-site monitoring visits of care provider facilities and ensuring compliance with DCS national care standards.
- Collecting, analyzing and reporting statistical information on children in the program.
- Providing training to federal, state and local officials who have substantive contact with unaccompanied, undocumented children.
- Developing procedures for age determinations and conducting these determinations along with the Department of Homeland Security.
- Cooperating with the Department of Justice's Executive Office for Immigration Review to ensure that sponsors of the children receive legal orientation presentations.
- Ensuring access to legal representation or counsel for all undocumented, unaccompanied children in custody.
- Granting specific consent for state court jurisdiction over children.

###

# Exhibit D-2

# Fact Sheets and Data



Current as of: May 12, 2025

## Fact Sheets

- [ORR Influx Care Facilities for Unaccompanied Alien Children Fact Sheet](#)
- [Unaccompanied Alien Children Bureau Fact Sheet](#)

## Data

**Note:** A fiscal year begins October 1 and ends on September 30.

## REFERRALS

AVERAGE MONTHLY DATA

AVERAGE LENGTH OF CARE

SEX

AGE

TENDER AGE (0-12) CHILDREN BY SHELTER TYPE

COUNTRY OF ORIGIN

PRIMARY LANGUAGE

HOME STUDIES

RELEASED TO SPONSORS

POST-RELEASE SERVICES

## Referrals

Number of referrals ORR receives from the Department of Homeland Security each fiscal year.

FISCAL YEAR	REFERRALS
FY2024	98,356
FY2023	118,938
FY2022	128,904



FISCAL YEAR	REFERRALS
FY2021	122,731
FY2020	15,381
FY2019	69,488
FY2018	49,100
FY2017	40,810
FY2016	59,170
FY2015	33,726
FY2014	57,496
FY2013	24,668
FY2012	13,625

Read more about [referrals to ORR and initial placement](#).

**Daily Data** [↗](#) : Number of unaccompanied alien children who are in ORR’s care after being referred by the Department of Homeland Security.

[Average Monthly Data](#) [➤](#)

**PLEASE NOTE THAT ALL FY2025 UAC DATA REPRESENTED HERE IS UNRECONCILED AND SUBJECT TO CHANGE.**

# Exhibit D-3

# ORR Unaccompanied Alien Children Bureau Policy Guide: Section 1



## Placement in ORR Care Provider Facilities

Current as of: May 19, 2025

### 1.1 Summary of Policies for Placement and Transfer of Unaccompanied Alien Children in ORR Care Provider Facilities

The Office of Refugee Resettlement (ORR) coordinates and implements the care and **placement** of **unaccompanied alien children** who are in ORR custody by reason of their immigration status. The majority of unaccompanied alien children come into ORR custody because they were apprehended by Border Patrol agents with the **U.S. Department of Homeland Security (DHS)** while trying to enter the United States without legal authorization. DHS (and in rare circumstances other federal agencies) may refer unaccompanied alien children to ORR's care 24 hours a day, seven days a week.

ORR has procedures in place to obtain background information on the unaccompanied alien child from the referring federal agency to assess whether the child is a danger to self or others, whether there are any known medical and/or mental health issues, and whether other specific individualized needs are known, and then to designate an available care provider. ORR uses this information to determine an appropriate placement in the least restrictive setting for the child.

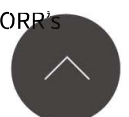
In certain exceptional cases where the referring agency (or other federal agencies supporting the referring agency) communicates with ORR that a child will likely be determined to be unaccompanied (see **Section 2.2 Sponsor Application Process**), ORR may begin the reunification process in order to diminish the length of time in ORR custody. This can occur:

1. Before the child is in federal custody;
2. Ahead of ORR receiving a written referral; and/or
3. Before the **transfer** of the child into ORR's physical custody and placement in a care provider facility.

ORR may enter into formal agreements with federal agencies (or other entities supporting the federal agency) in order to delineate the types of information ORR will receive ahead of a written referral in order to begin the reunification process, which may include information from non-federal entities.

ORR policies for placing children in its custody into care provider facilities are based on legal requirements as well as child welfare best practices in order to provide a safe environment and place the child in the least restrictive setting appropriate for the child's needs. ORR applies the following general principles to the care and placement of unaccompanied alien children:

1. Within all placements, children must be treated with dignity, respect, and special concern for their particular vulnerability.
2. ORR must hold children in facilities that are safe and sanitary and that are consistent with ORR's concern for the particular vulnerability of unaccompanied alien children.
3. ORR plans and provides care and services based on the individual needs of and focusing on the strengths of the child.
4. ORR encourages children, as developmentally appropriate and in their **best interests**, to be active participants in ORR's decision-making process related to their care and placement.



5. ORR strives to provide quality care tailored to the individualized needs of each child in its custody, ensuring the interests of the child are considered, and that unaccompanied alien children are protected from traffickers and other persons seeking to victimize or otherwise engage them in criminal, harmful, or exploitative activity, both while in ORR custody and upon **release** from the UAC Bureau.
6. In making placement determinations, ORR must place each child in the least restrictive setting that is in the best interests of the child, giving consideration to whether the child poses a danger to self or others, and **runaway risk**.
7. When requesting information or consent from children, ORR consults with parents, **legal guardians**, **child advocates**, and attorneys of record or Department of Justice (DOJ) accredited representatives as needed.

ORR may place a child in a **shelter** facility, **transitional** or **long-term foster care** (which may be a **group home** or **therapeutic**), **heightened supervision** facility or **secure facility** (including **residential treatment centers**), or other care facility that can provide for their specific individualized needs, including **out-of-network (OON)** placements, which may be **restrictive** or non-restrictive (see **Section 1.4.6 Residential Treatment Center and Out-of-Network Placements**). ORR makes reasonable efforts to provide licensed placements in those geographical areas where DHS encounters the majority of unaccompanied alien children.

There are two types of placement decisions:

1. The initial placement into a **care provider facility**; and
2. Transfers between care providers. Although the circumstances and procedures for initial placement and transfer vary, ORR applies the same child welfare principles in its decision-making process.

ORR takes legal custody of the unaccompanied alien child when ORR assumes physical custody of the child from the referring federal agency. The referring federal agency generally transports the unaccompanied alien child to the ORR care provider. However, under certain extenuating and exceptional circumstances, ORR may assume physical custody of the child, and thereby legal custody, to facilitate release to a vetted sponsor in lieu of placement with an ORR care provider.

*Revised 08/01/2024*

## 1.2 ORR Standards for Placement and Transfer Decisions

ORR policies for placing children in its custody into care provider facilities are based on child welfare best practices in order to provide a safe environment and place the child in the least restrictive setting appropriate for the child's needs. ORR may place a child in a **shelter facility**, foster home or group home (which may be **therapeutic**), **heightened supervision** facility or **secure facility** (including **residential treatment centers**), or other care facility that can provide for their specific individualized needs, including an out-of-network (OON) placement (which may be restrictive or non-restrictive) as described in **Section 1.4.6 Residential Treatment Center and Out-of-Network Placements**.

In times of **influx** or **emergency**, ORR may place unaccompanied alien children in care provider facilities that may not meet the standards of a **standard program**, but rather meet the standards in **Section 7: Policies for Influx Care Facilities**.

There are two types of placement decisions: the initial placement into a **care provider facility** or other setting and transfers between care providers. Although the circumstances and procedures for initial placement and transfer vary, ORR applies the same child welfare model to both types of care delivery. ORR places all unaccompanied alien children in standard programs that are not restrictive placements except in the following circumstances:

- An unaccompanied alien child meets the criteria for placement in a restrictive placement (see **Section 1.2.4 Secure and Heightened Supervision Facilities** and **Section 1.4.6**); or
- In the event of an emergency or influx of unaccompanied alien children into the United States, in which case ORR places the unaccompanied alien child as expeditiously as possible.

ORR makes every effort to place children within the ORR care provider network. However, there may be instances when ORR determines there is no in-network care provider available to provide specialized services to meet an unaccompanied alien child's identified needs, no in-network care provider equipped to meet those needs with the capacity to accept a new placement, or transfer to a less restrictive facility is warranted and ORR is unable to place the child in a less restrictive in-network care provider facility. In those cases, ORR will consider an out-of-network placement. An ORR/Federal Field Specialist (FFS) and the FFS Supervisor must approve placement into an out-of-network facility as the least restrictive placement in the child's best interests (see [Section 1.4.6](#)).

ORR must approve all transfers and releases while a child is in its custody, except in emergency situations where a care provider may temporarily transfer placement of an unaccompanied alien child. In these emergency situations, the care provider must notify ORR of the transfer within eight (8) hours.

*Revised 08/01/2024*

## 1.2.1 Placement Considerations

ORR places each unaccompanied alien child in the least restrictive setting that is in the best interests of the child and appropriate to the child's age and individualized needs, provided that such setting is consistent with the interest in ensuring the unaccompanied alien child's timely appearance before the U.S. Department of Homeland Security (DHS) and the immigration courts and in protecting the child's well-being and that of others.

ORR considers the following factors to the extent they are relevant to the unaccompanied alien child's placement, including:

1. Danger to self;
2. Danger to the community/others;
3. Runaway risk;
4. Trafficking in persons or other safety concerns;
5. Age;
6. Sex;
7. **LGBTQI+** status or identity;
8. **Disability**;
9. Any specialized services or treatment required or requested by the unaccompanied alien child;
10. Criminal background;
11. Location of potential sponsor and safe and timely release options;
12. Behavior;
13. Siblings in ORR custody;
14. Language access;
15. Whether the unaccompanied alien child is pregnant or parenting;
16. Location of the unaccompanied alien child's apprehension; and
17. Length of stay in ORR custody.

ORR may utilize information provided by the referring Federal agency, child assessment tools, interviews, and pertinent documentation to determine the placement of all unaccompanied alien children. ORR may obtain any records from local, State, and Federal agencies regarding an unaccompanied alien child to inform placement decisions.

ORR reviews, at least every 30 days, the placement of an unaccompanied alien child in a restrictive placement to determine whether a new level of care is appropriate (see [Section 1.4.2 30-Day Restrictive Placement Case Review](#)).

When specialized services or treatments (including but not limited to access to medical specialists, **family planning services**, and medical services requiring heightened ORR involvement) are determined to be medically necessary during the referral, intake process, Initial Medical Exam, or at any point while the child is in ORR custody, or the child reasonably requests such medical care while in ORR custody, ORR, to the greatest extent possible, identifies available and appropriate bed space and places the child at a care provider facility that:

- Is able to provide or arrange such care;
- Is in an appropriate location to support the child's healthcare needs; and
- Affords access to an appropriate medical provider who is able to perform any reasonably requested or medically necessary services.

*Revised 02/27/2025*

## 1.2.2 Children with Specific Individualized Needs

Whenever possible, ORR place a child with specific individualized needs in a care provider facility serving the general population but that is able to provide services and treatment for specific individualized needs. In all instances, ORR must place each unaccompanied alien child in the least restrictive setting in the best interests of the child.

ORR gives priority for transitional foster care placements to children in the following special situations:

- Children who are under 13 years of age;
- Sibling groups with one sibling under 13 years of age;
- Children who are pregnant or parenting;
- Children with other specific individualized needs.

ORR assesses each unaccompanied alien child in its care to determine whether the child requires particular services and treatment by staff to address their individualized needs while in the care of the UAC Bureau. An unaccompanied alien child's assessed needs may require particular services, equipment, and treatment by staff for various reasons, including, but not limited to disability, alcohol or substance use, a history of serious **neglect** or abuse, **tender age**, pregnancy, or parenting. If ORR determines that an unaccompanied alien child's individualized needs require particular services and treatment by staff or particular equipment, ORR places the unaccompanied alien child, whenever possible, in a standard program in which the unaccompanied alien child with individualized needs can interact with children without those individualized needs to the fullest extent possible, and provides services and treatment or equipment for such individualized needs.

*Revised 08/01/2024*

## 1.2.3 Safety Issues

The safety and well-being of a child is a primary consideration in placement decisions. Issues related to safety including a child being fearful of others, such as specific individuals who would seek to harm or exploit the child (e.g., smugglers, traffickers, drug cartels, or other organized crime groups) and a child who is a material witness or a victim of crime. ORR collaborates with law enforcement officials on the placement of an unaccompanied alien child who has information that may be relevant to a criminal proceeding (e.g., "material witness").

*Revised 08/01/2024*

## 1.2.4 Secure and Heightened Supervision Facilities

## Determination to Place an Unaccompanied Alien Child in a Restrictive Facility

Every decision to initially place, transfer, or continue placement of an unaccompanied alien child in a **heightened supervision, secure, residential treatment center (RTC)**, or restrictive out-of-network facility must be supported by clear and convincing evidence documented in the unaccompanied alien child's **case file**. **Clear and convincing evidence** means the conclusion is highly and substantially more likely to be true than untrue. Therefore, ORR must demonstrate that placement in a restrictive facility is appropriate because the available information about the child makes it highly and substantially more likely that:

- The child poses a danger to self or others; and/or
- Poses a risk of running away.

The existence of a report of a **significant incident** must not be used as a basis for an unaccompanied alien child's step-up to a restrictive placement or as the sole basis for a refusal to step a child down to a less restrictive placement. Reports of significant incidents may be used as examples or citations of concerning behavior. However, the existence of a report itself is not sufficient for a step-up or a refusal to step-down.

ORR has two levels of care for unaccompanied alien children who are assessed to be a danger to themselves or others, have a criminal history, or require close supervision. These two levels of care are heightened supervision and secure. Heightened supervision facilities maintain stricter security measures than non-restrictive care providers (e.g., shelters), such as intensive staff supervision, in order to provide supports, manage problem behavior, and prevent children from running away. Secure facilities are for children who require the strictest level of supervision. Secure facilities have a secure perimeter, major restraining construction inside the facility, and procedures typically associated with correctional facilities.

ORR may place an unaccompanied alien child in a heightened supervision or a secure setting either at initial placement or through a transfer to another facility from the initial placement. ORR provides the child written notice of the reasons for placement in a secure or heightened supervision facility by providing the **Notice of Placement in a Restrictive Setting (NOP)** form within 48 hours after an unaccompanied alien child's arrival at a restrictive placement, as well as at minimum every 30 days the child remains in a restrictive placement (see **Section 1.4.2 30-Day Restrictive Placement Case Review**). **Case Managers** review the NOP with children in their preferred language with an explanation that takes into account their level of understanding and is delivered in a child-friendly manner.

If a child has a serious mental health or behavioral health issue and has been evaluated and determined to be a danger to self or others by a licensed psychologist or psychiatrist, ORR may place the child in an RTC or other therapeutic setting. ORR provides the child an NOP form within 48 hours of a child's placement, as well as at minimum every 30 days that the child remains in a restrictive placement, explaining the reasons for placement in an RTC or therapeutic setting (see **Section 1.4.6 Residential Treatment Center and Out-of-Network Placements**).

Within 48 hours of the child's admission to a restrictive facility (as well as every 30 days that the child remains in a restrictive placement), the care provider must also send a copy of the NOP to the child's:

- **Attorney of record;**
- **Legal service provider;**
- Child advocate (if applicable); and
- Parent, unless there are child welfare reasons not to do so, the parent cannot be reached, or when a child 14 years or older states that they do not want the parent to receive a copy of the NOP. Child welfare reasons not to share the NOP may include but are not limited to:
  - Provision of the NOP to the parent would pose a danger to the child;
  - Parent is present in the United States but has declined to be the child's sponsor; or
  - A custodial parent has stated that a copy of the NOP should not be provided to a non-custodial parent.

## Placement of Children with Disabilities in a Restrictive Facility



ORR is committed to ensuring that children with disabilities are placed in the least restrictive, most integrated setting consistent with their best interests and individualized needs while they are in ORR care and custody.

ORR's determination whether to place a child with one or more disabilities in a restrictive placement (or to transfer a child to such a placement) shall include consideration of whether there are any reasonable program modifications or any aids, supports or services that could be provided in a less restrictive placement (which may be the child's current placement) and would enable the child to be placed (or remain) in such a less restrictive facility.

If a child with one or more disabilities requires placement in a more restrictive program (i.e., an RTC or other restrictive therapeutic facility, heightened supervision, or secure program), the care provider recommending the transfer or the FFS Supervisor approving the initial placement in a restrictive facility must detail in writing the reasons why the child's placement in such a restrictive facility is necessary in order to meet their needs, and identify the services and care that the restrictive facility must provide the child. The documentation must also state why the child's needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or program modifications or accommodations.

In the case of a child not previously identified as having a disability, the care provider must refer the child for an evaluation for a disability upon considering the child for placement in a secure, RTC, or other secure therapeutic facility. In accordance with **Section 3.8 Children with Disabilities in ORR Custody**, the care provider must submit the evaluation referral prior to submitting a request to transfer the child to a restrictive placement. The child may be transferred while awaiting the evaluation, but the referral must occur before the transfer is requested. If the restrictive facility is the child's initial placement with ORR, the referral for a disability evaluation must occur immediately.

#### **Secure Facility (that is not an RTC)**

It is expected that care providers address behavioral concerns by children in ORR custody in accordance with **Section 3.3.13 Behavioral Management** prior to seeking placement of a child in a secure facility (that is not an RTC). ORR only places an unaccompanied alien child in a secure facility if there is clear and convincing evidence that the child:

1. Poses a danger to self or others; or
2. Has been charged with or convicted of a criminal offense or is chargeable with such an offense.

In determining whether to place an unaccompanied alien child in a secure care (that is not an RTC), ORR considers if the unaccompanied alien child:

- Has been charged with or has been convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent<sup>1</sup>, and where ORR deems that those circumstances demonstrate that the unaccompanied alien child poses a danger to others, not including:
  - Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person, or the use or carrying of a weapon (e.g., breaking and entering, vandalism, DUI, status offenses, etc.); or
  - Petty offenses which are not considered grounds for a stricter means of detention in any case (e.g., shoplifting, joy riding, disturbing the peace).
- Has committed, or has made credible threats to commit, a violent or malicious act directed at others, while the child was in 1) the U.S. Department of Homeland Security (DHS), 2) ORR's custody, or 3) the presence of an immigration officer, ORR official, or ORR contracted staff.
- Has engaged, while in a restrictive placement, in conduct that has proven to be unacceptably disruptive of the normal functioning of the care provider facility, and removal is necessary to ensure the welfare of others, as determined by the staff of the care provider facility (e.g., stealing, fighting, intimidation of others, or sexually predatory behavior), and ORR determines the unaccompanied alien child poses a danger to others based on such conduct.



A finding that a child poses a danger to self must not be the sole basis for a child's placement in a secure facility (that is not an RTC).

ORR must not place an unaccompanied alien child in a secure facility (that is not an RTC) if less restrictive alternatives in the best interests of the unaccompanied alien child are available and appropriate under the circumstances.

### **Heightened Supervision Facility<sup>2</sup>**

A heightened supervision facility is a licensed childcare facility for unaccompanied alien children who require close supervision, but do not require placement in a secure facility. A decision to place a child in a heightened supervision facility is based on clear and convincing evidence that the child meets the criteria for the placement.

In determining whether to place a child in a heightened supervision facility, ORR considers if the child:

- Has been unacceptably disruptive to the normal functioning of a shelter care provider facility such that transfer is necessary to ensure the welfare of the child or others;
- Is at risk of running away;
- Has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff; or,
- Has non-violent criminal or delinquent<sup>3</sup> history not warranting placement in a secure facility, but which evidences a behavioral concern that requires an increase in supervision above what would be provided in a non-restrictive facility.

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## **1.2.5 Unaccompanied Alien Children Who Pose a Risk of Running Away**

ORR does not place a child in a secure facility solely because they may pose a risk of running away from ORR custody. However, ORR may place a child in a **heightened supervision facility** solely because they are a runaway risk. In all cases, ORR must assess whether an unaccompanied alien child is a runaway risk in order to make an informed placement decision.

When determining whether an unaccompanied alien child is a runaway risk for purposes of placement decisions, ORR considers, among other factors, whether:

- The unaccompanied alien child has previously absconded or attempted to abscond from State or Federal custody.
- The unaccompanied alien child has displayed behaviors indicative of flight or has expressed intent to run away.
- Evidence that the unaccompanied alien child is experiencing a strong **trauma bond** to or is threatened by a trafficker in persons or drugs.
- The unaccompanied alien child is within one month of turning 18 years of age.
- An unaccompanied alien child with an immigration history that includes:
  - A final order of removal (child has a legal duty to report for deportation)
  - A prior breach of a bond
  - Failure to appear before the U.S. Department of Homeland Security or the immigration courts
  - Previous repatriation (return to the home country) through a grant of voluntary departure or a final order of removal from an immigration judge

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## **1.2.6 Long-Term Foster Care**


An **unaccompanied alien child** may be placed in a long-term foster care (LTFC) setting, such as community-based foster care or a community-based group home. LTFC providers must ensure that each child is placed in a licensed foster home or group home and consider the child's preference, cultural, and linguistic needs when making placements.

A child is a candidate for LTFC if they:

- Are expected to have a protracted stay of four (4) months or more in ORR custody because they do not have a viable sponsor and/or the child is likely to be in ORR care for a prolonged time for other reasons<sup>4</sup>; and
- Are under the age of 17 and 6 months at the time of placement, unless waived by both the referring and receiving Federal Field Staff (FFS), who will take into account the best interests of the child.

ORR considers the following factors when making an LTFC referral and placement decision:

- The child's mental, emotional, behavioral, and physical health needs;
- The child's ability and commitment to live in a family and community-based setting;
- The child's age;
- Availability of an appropriate placement that meets the child's needs; and
- The legal service provider's (LSP) recommendation of preferred locations for placement based on the child's eligibility for immigration relief.

The LSP's recommendation of preferred locations for placement must be based on the child's potential for immigration relief, type of immigration relief, and status of court hearings or relief petitions. ORR will consider the recommendation, in addition to the factors listed above, in determining the LTFC placement that is in the child's best interests (see **8 U.S.C. § 1232 (c)(2)(A)**  ). The referring LSP will conduct the assessment and prepare their recommendations prior to the care provider initiating the transfer request to LTFC (see **Section 1.4.4 Transfer to Long-Term Foster Care**).

When possible, taking into consideration the placement factors listed above, ORR will make a best effort to place the child in a location where their immigration case would be best served. If a bed in the locations included in the LSP's recommendation is not available, a Child Advocate referral must be made (see **Section 2.3.4 Child Advocates**). Additionally, the case must be staffed with the FFS to determine whether to proceed with the LTFC transfer and to determine the placement option that is in the child's best interests.

In regard to a child's consent to share the LSP's recommendation of preferred locations of placement with ORR, LSP's will abide by their professional standards for seeking consent. If the child does not consent to sharing the information on the list of preferred placement options from the LSP, the LSP will not share it with ORR. If the transfer is within the best interests of the child, ORR will proceed with the LTFC placement, even if ORR does not receive the list of preferred placements from the LSP and/or if the child does not consent to sharing the information with ORR.

*Revised 01/16/2025*

## 1.2.7 Placing Family Members (Siblings and Children of Unaccompanied Alien Children)

### Placements

Under most circumstances, ORR places siblings together and unaccompanied alien children who are parents with their children. The following cases would be an exception to family grouping:

- The unaccompanied alien child wishes otherwise (evaluated on a case-by-case basis);
- The placement would be contrary to the developmental, treatment, or safety needs of the unaccompanied alien child or their children;
- There is an unusual or emergency situation.

In addition to the ones listed above, there are other exceptional circumstances that would prevent unaccompanied alien child from residing with their children in the same care provider facility. These circumstances include an unaccompanied alien child who is a parent who:

- Requires specialized placement in a setting that cannot provide appropriate care for an infant or young child (for example, a residential treatment center or hospital);
- Does not want their child to reside in the same place;
- Is the subject of open or substantiated allegations of abuse or neglect against their child.

If siblings or children of an unaccompanied alien child must be placed separately, the care provider tries to maintain regular ongoing contact, unless a mental health or child welfare professional deems the contact harmful, or unless the contact is contrary to the wishes of the unaccompanied alien child.

The separation of an unaccompanied alien child from their siblings or from their child requires prior authorization of ORR.

## Services

ORR provides the same care and services to the children of unaccompanied alien children as it provides to unaccompanied alien children, as appropriate, regardless of the children's immigration or citizenship status.

The United States citizen children of unaccompanied alien children are eligible for public benefits and services to the same extent as other U.S. citizens. Application(s) for public benefits and services are submitted on behalf of the U.S. citizen children of unaccompanied alien children by care provider facilities. Utilization of those benefits and services must be exhausted to the greatest extent practicable before ORR-funded services are utilized.

*Revised 08/01/2024*

## 1.3 Referrals to ORR and Initial Placement

ORR accepts referrals of **unaccompanied alien children** from any department or agency of the Federal Government, at any time of day, every day of the year. Upon notification from any department or agency of the Federal government that a child in its custody is an unaccompanied alien child and therefore must be transferred to ORR custody, ORR identifies a standard program placement for the unaccompanied alien child, unless one of the listed exceptions in **Section 1.2 ORR Standards for Placement and Transfer Decisions** applies, and notifies the referring federal agency within 24 hours of receiving the referring agency's notification whenever possible, and no later than within 48 hours of receiving notification, barring exceptional circumstances.

ORR works with the referring federal agency to accept transfer of custody of the unaccompanied alien child, as required under the **Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)** (PDF) (8 U.S.C. 1232(b)(3)). ORR takes legal custody of an unaccompanied alien child when it assumes physical custody from the referring agency.

ORR may be unable to timely identify a placement for and timely accept transfer of custody of an unaccompanied alien child due to exceptional circumstances, including:

1. Any court decree or court-approved settlement that requires otherwise;
2. An **influx**;
3. An emergency, including a natural disaster such as an earthquake or hurricane, a facility fire, or a civil disturbance;
4. A large-scale medical emergency affecting unaccompanied alien children (e.g., viral epidemic);
5. The apprehension of an unaccompanied alien child in a remote location;
6. The apprehension of an unaccompanied alien child whom the referring federal agency indicates:
  - Poses a danger to self or others; or

- Has been charged with or has been convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent, and additional information is essential in order to determine an appropriate ORR placement.

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### 1.3.1 Request for Information from the Referring Federal Agency

As a first step, ORR requests background information from the referring federal agency to assess whether the **unaccompanied alien child** is a danger to self or others, whether there are any known medical and/or mental health issues, and whether other special concerns or needs are known. ORR uses this information to determine an appropriate placement for the child in the least restrictive setting.

ORR requests the following information from the referring agency:

- How the referring agency made the determination that the individual is an unaccompanied alien child;
- Health-related information including, but not limited to, if the unaccompanied alien child is pregnant or parenting and whether there are any known physical or mental health concerns. If there are significant medical concerns (i.e., the unaccompanied alien child is not fit for travel), ORR requests that the referring federal agency medically clears the child before ORR will designate placement. In its discretion, ORR may designate placement for unaccompanied alien children who are pending medical clearance;
- Whether the child has any medication or prescription information, including how many days' supply of the medication will be provided with the child when transferred into ORR custody;
- Biographical and biometric information, such as name, sex, A number, date of birth, country of birth and nationality, date(s) of entry and apprehension, place of entry and apprehension, manner of entry, and the unaccompanied alien child's current location;
- Any information concerning whether the child is a victim of trafficking or other crimes (e.g., "human trafficking indicators");
- Whether the unaccompanied alien child was apprehended or encountered with a sibling, other related unaccompanied alien child, or other adult relative;
- Identifying information and contact information for a parent, legal guardian, or other related adult providing care for the child prior to apprehension or encounter, if known;
- If the unaccompanied alien child was apprehended or encountered in transit to a final destination, what the final destination was and who the child planned to meet or live with at that destination, if known;
- Whether the unaccompanied alien child is a runaway risk, and if so, the runaway risk indicators;
- Any information on a history of violence, juvenile or criminal background, or gang involvement known or suspected, risk of danger to self or others, State court proceedings, and probation;
- If the child is being returned to ORR custody after arrest on alleged gang affiliation or involvement, ORR requests all documentation confirming whether the child is a *Saravia* class member and information on the *Saravia* hearing, including the date and time;
- Any specific individualized needs or other information that would affect the care and placement for the child.

ORR may seek clarification about the information provided by the referring agency as needed. In such instances, ORR notifies and works with the referring agency, including by requesting additional information, in accordance with statutory time frames.

In certain cases where the federal partner agencies, including but not limited to the referring federal agency, communicate with ORR that a child will likely be determined to be unaccompanied (see **Section 2.2 Sponsor Application Process**), ORR may request

additional information from the referring agency, or third-party partners, regarding the potential sponsor(s) of a child likely to enter ORR care to begin the vetting process prior to placement in an ORR care provider facility.

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### 1.3.2 ORR Placement Designation

The Division of Unaccompanied Alien Children Placement Operations (DUACPO) identifies appropriate and available bed space at a care provider, the ORR care provider facility, and/or other setting that provides care for the unaccompanied alien child, and DUACPO contacts the care provider to confirm availability. Consistent with **Section 1.4.1 Least Restrictive Setting**, ORR places each unaccompanied alien child in the least restrictive setting that is in the best interests of the child, giving consideration to the child's danger to self, danger to others, and runaway risk.

ORR attempts to identify and designate a placement for the unaccompanied alien child within 24 hours of the initial referral, whenever possible.

In cases where a child may present a danger to self or others, ORR staff use a standardized checklist (the "Intakes Placement Checklist") to input all available information on the unaccompanied alien child's history and condition.

DUACPO uses the Intakes Placement Checklist if the unaccompanied alien child has:

- A juvenile or adult criminal history, including involvement in human trafficking or smuggling;
- Prior acts of violence or imminent threats of violence in government custody;
- Pattern of severity of behavior that requires increased supervision;
- Prior run away(s) or attempt to run away(s) from government custody;
- Serious mental health or behavioral health concerns where placement into a **Residential Treatment Center (RTC)** is based upon a recommendation by a licensed psychiatrist or psychologist consulted by ORR or an ORR program;
- Committed **sexual abuse** where there is coercion by overt or implied threats of violence against another person and/or there is an immediate danger to others.

ORR may seek clarification about the information provided by the referring federal agency as needed. In such instances, ORR shall notify the referring agency and work with the referring agency, including by requesting additional information, in accordance with statutory time frames. See 8 U.S.C. 1232(b)(3).

Based on the information available, DUACPO recommends a level of care for the unaccompanied alien child. DUACPO reviews the Intakes Placement Checklist with an ORR/Federal Field Specialist (FFS) Supervisor or designated FFS. The **ORR/FFS** Supervisor or designated FFS makes a final placement decision on the level of care based on the information provided to DUACPO, and DUACPO designates the unaccompanied alien child's placement. The ORR/FFS Supervisor may decide to place a child in a restrictive facility (secure, heightened supervision, residential treatment center (RTC), or restrictive out-of-network placement) only if there is clear and convincing evidence to sufficiently support the placement and is documented in the child's case file. A finding that a child poses a danger to self must not be the sole basis for a child's placement in a secure facility (that is not an RTC) (see **Section 1.2.4 Secure and Heightened Supervision Facilities**).

For placement of an unaccompanied alien child who previously ran away from ORR care and custody, DUACPO reviews the child's previous placement history and any documentation provided by the referring agency that indicates how the child spent their time after running away from ORR care and custody if this information is provided by the referring agency. DUACPO will designate a placement for the child at the child's prior care provider if a bed is available and the placement is appropriate to the child's needs. If placement with the child's prior care provider is not available or is not appropriate, ORR may place the child at another ORR care provider in accordance with standard ORR policies and procedures. (see **Sections 1.2.1 Placement Considerations, 1.2.2 Children with Special**

**Needs**, and **1.2.3 Safety Issues**). Any placement, including to the child's previous care provider, will follow standard initial referral requirements.

For placement of an unaccompanied alien child with medical or mental health issues, DUACPO may consult with the **ORR/FFS**, the Division of Health for Unaccompanied Alien Children, or an FFS Supervisor on the placement. Pursuant to **Section 3.8 Children with Disabilities in ORR Custody**, before placing a child identified as having a disability or disabilities in a restrictive placement (a secure facility, a residential treatment center, or a heightened supervision facility) the FFS Supervisor must document in the child's case file the reasons why the child's disability-related needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or accommodations. The FFS Supervisor must also describe and document the services or care that will be provided at the restrictive placement, why they are necessary for the child, and why they cannot be provided in a less restrictive placement. The documentation must be included in the child's case file in ORR's online case management system and the Evidentiary Record.

If the child was not previously identified as having one or more disabilities, the child must be referred for an evaluation to determine whether they have a disability or disabilities at the time that the placement into a secure facility, residential treatment center, or other secure therapeutic facility is made. All documentation related to a child's referral for evaluation for a possible disability or disabilities must be included in the Evidentiary Record.

As discussed in **Section 1.4.6 Residential Treatment Center and Out-of-Network Placements**, a child with serious mental health issues may only be placed into an RTC if the child is evaluated and determined to be a danger to self or others by a licensed psychologist or psychiatrist consulted by ORR or an ORR care provider, which includes a determination by clear and convincing evidence documented in the child's case file, including documentation by a licensed psychologist or psychiatrist that placement in an RTC is appropriate.

ORR may initially place a child at an out-of-network (OON) placement (which may be restrictive or non-restrictive) subject to **Section 1.4.1 Least Restrictive Setting**, if ORR determines that:

- A child has a specific need that cannot be met within the ORR network of facilities; or
- No in-network care provider facility equipped to meet the child's needs has the capacity to accept a new placement.

ORR may place a child in an OON RTC, in particular, when a licensed clinical psychologist or psychiatrist consulted by ORR or a care provider facility has determined that the child requires a level of care only found in an OON RTC either because the child has identified needs that cannot be met within the ORR network of RTCs or no placements are available within ORR's network of RTCs, or that an OON RTC would best be able to meet the child's identified needs. The criteria for placement in an RTC also apply to placements in OON RTCs.

OON facilities and providers are generally subject to the same standards of care and service delivery as in-network providers. See further discussion of OON placements at Section 1.4.6.

*Revised 05/19/2025*

### 1.3.3 Care Provider Placement Acceptance

ORR complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, religion, or sex (including pregnancy and sexual orientation and/or gender identity) (see **HHS Nondiscrimination Notice** [↗](#); see also **ORR Nondiscrimination Notice**). No ORR care provider, including foster care providers, may refuse placement of a child based solely on a child's disability.

After ORR requests a placement in a particular facility, including for an unaccompanied alien child who was previously in ORR custody and is being referred to ORR on a subsequent occasion, a care provider facility must accept the placement of **unaccompanied alien**



**children** as determined by ORR, and may deny placement only based on the following reasons:

1. Lack of available bed space;
2. Placement of the unaccompanied alien child would conflict with the care provider's State or local licensing rules;
3. Initial placement involves an unaccompanied alien child with a significant physical or mental illness for which the referring federal agency does not provide a medical clearance; or
4. In the case of the placement of an unaccompanied alien child with a disability, the care provider facility concludes it is unable to meet the child's disability-related needs, without fundamentally altering its program, even by providing reasonable modifications and even with additional support from ORR.

Care provider facilities are prohibited from using the existence of a report of a significant incident as a basis for refusing an unaccompanied alien child's placement in their facilities.

Care provider facilities must submit a written request to ORR for authorization to deny placement of unaccompanied alien children, providing the individualized reasons for the denial. Any such request must be approved by ORR before the care provider facility may deny a placement. The care provider's written explanation must be documented in ORR's online case management system. In cases where a care provider has not sufficiently demonstrated that their reasons for denying a placement meet the criteria established above, the denial may be referred to ORR's Care Provider Placement Acceptance Panel for review to ensure their compliance with ORR policies.

In response to a placement denial for a child with one or more disabilities, where appropriate, ORR will work to provide resources to support the child's placement, as is consistent with the requirements that the placement of a child with a disability must be in the least restrictive setting that is in their best interests and the most integrated setting appropriate to their needs.

*Revised 02/27/2025*

### 1.3.4 Transfer of Custody to ORR

The referring federal agency generally transports the **unaccompanied alien children** to the ORR care provider. ORR takes custody of the unaccompanied alien child when the child physically arrives at the designated ORR care provider.

Upon arrival, the care provider requests from the referring federal agency the unaccompanied alien child's prescriptions and medications, as applicable, personal belongings, and any necessary the U.S. Department of Homeland Security (DHS) or other federal agency documentation. If exceptional circumstances prevent the referring federal agency from providing complete documentation, the care provider may not deny or delay admitting the child. If a care provider receives a child with special concerns that were not reported in the referral, the care provider must contact ORR immediately.

*Revised 08/01/2024*

### 1.3.5 Initial Placements in the Event of an Emergency or Influx

Historically, ORR has experienced periods when the U.S. Department of Homeland Security (DHS) apprehends a significantly greater number of **unaccompanied alien children** than at other times of the year. These periodic intervals are called an "influx." In addition to an influx, a natural disaster or other emergency may prevent the prompt (within 24 hours) initial placement of unaccompanied alien children in care provider facilities.

ORR has procedures in place to make sure that care providers are available to accommodate these influx intervals and make initial placements as quickly as possible while successfully providing the range of services that ORR requires for every unaccompanied alien child.

ORR annually reviews its contingency plans based on the actual and anticipated number of unaccompanied alien children referrals to monitor available resources in light of expected needs.

For more information, see [Section 7.2 Placement into Influx Care Facilities](#).

*Revised 08/01/2024*

### 1.3.6 *Saravia* Intakes Screening and Placement Determinations

For cases in which ORR determines that a child was previously in ORR custody and was properly referred to ORR on a second occasion, Division of Unaccompanied Alien Children Placement Operations (DUACPO) verifies the referring agency's determination of *Saravia* class eligibility.

An unaccompanied alien child is a member of the *Saravia* class if they:

1. Were previously in ORR custody;
2. ORR released them to a sponsor; and
3. Were sent to ORR by a referring agency at least partially on the basis of alleged gang affiliation or involvement.

In such cases, and where the child is properly re-referred to ORR custody as an unaccompanied alien child, DUACPO verifies *Saravia* class membership and attempts to obtain documentation from the U.S. Department of Homeland Security confirming the following (while continuing with the placement process):

- That the unaccompanied alien child was provided notice of a *Saravia* hearing within 48 hours of arrest;
- That the notice included information explaining the purpose and nature of proceedings and the specific acts or conduct alleged; and
- That the *Saravia* hearing either has already occurred, is scheduled to occur within 10 days of arrest by the referring agency, or that the unaccompanied alien child waived the 10-day hearing requirement in order to retain an attorney.

ORR does not delay the initial placement of possible *Saravia* class members into an appropriate ORR care provider program during the screening process (see [Section 1.3.2 ORR Placement Designation](#)). ORR places *Saravia* class members in the least restrictive setting that is appropriate for the individual child.

ORR does not place *Saravia* class members in a restrictive setting (e.g., heightened supervision, [secure, residential treatment center](#)) solely based on alleged gang affiliation or involvement that is the basis for *Saravia* class membership.

*Revised 08/01/2024*

## 1.4 Transfers within the ORR Care Provider Network

Because an [unaccompanied alien child](#)'s placement needs can change, the care provider must conduct ongoing assessments of children's needs throughout the child's stay in ORR custody. Care providers also take into consideration information from the referring federal agency, child assessment tools, interviews, location of the child's sponsor or family in the U.S., records from local, State, and federal agencies, and information from stakeholders, including the child's legal service provider, attorney of record or Child Advocate, as applicable, when making transfer recommendations.

The care provider facility continuously assesses unaccompanied alien children in their care to review whether the children's placements are appropriate. An unaccompanied alien child must be placed in the least restrictive setting that is in the best interests of



the child, subject to considerations regarding danger to self or the community and runaway risk. Care provider facilities must follow ORR guidance, including guidance regarding placement considerations, when making transfer recommendations.

If the care provider facility identifies an alternate placement for the unaccompanied alien child that would best meet the child's needs, the care provider facility makes a transfer recommendation to ORR for approval within three (3) business days of identifying the need for a transfer and immediately in urgent situations.

The care provider facility ensures the unaccompanied alien child is medically cleared for transfer within three (3) business days of ORR identifying the need for a transfer, unless otherwise waived by ORR. For an unaccompanied alien child with acute or chronic medical conditions or seeking medical services requiring heightened ORR involvement, the appropriate care provider facility staff and ORR meet to review the transfer recommendation. If a child is not medically cleared for transfer within three (3) business days, the care provider facility notifies ORR, and ORR reviews and determines if the child is fit for travel. If ORR determines the child is not fit for travel, ORR notifies the care provider facility of the denial and specifies a timeframe for the care provider facility to re-evaluate the child for transfer.

Consistent with **Section 1.4.1 Least Restrictive Setting**, ORR places each unaccompanied alien child in the least restrictive setting that is in the best interests of the child, giving consideration to the child's danger to self, danger to others, and runaway risk. If an alternate placement would better meet the child's individual needs, care providers must make transfer recommendations upon identification of the need for a transfer.

Pursuant to **Section 3.8 Children with Disabilities in ORR Custody**, before placing a child with a disability in restrictive placement (a secure facility, a residential treatment center (RTC), or a heightened supervision facility) the FFS Supervisor must document in the child's **Individualized Section 504 Service Plan** why the child's needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or accommodations. The FFS Supervisor must also describe and document the services or care that will be provided at the restrictive placement, why they are necessary for the child, and why they cannot be provided in a less restrictive placement. All documentation related to a child's disability or disabilities must be included in the child's case file in ORR's online case management system and the Evidentiary Record.

Before placing a child in a secure facility or an RTC based on danger to self or others, if the child was not previously identified as having a disability, the child must be referred for an evaluation to determine whether they have a disability when the placement into a secure facility or RTC is made. All documentation related to a child's referral for evaluation for a possible disability or disabilities must be included in the Evidentiary Record.

The **Case Coordinator** identifies the most appropriate care provider facility based upon the individual's needs and the bed capacity within the ORR network.

ORR has final authority on transfer decisions. The ORR/Federal Field Specialist (ORR/FFS) act as agents of ORR and make transfer decisions. Once the FFS approves a transfer request, the referring and receiving care providers coordinate logistics, including the transfer date (generally within three (3) days). The referring care provider facility notifies all designated stakeholders of the transfer (for example, the child's attorney).

Within 48 hours prior to the unaccompanied alien child's physical transfer, the referring care provider facility notifies all appropriate interested parties of the transfer, including the child's attorney of record or a U.S. Department of Justice Accredited Representative, legal service provider, or child advocate, as applicable. However, such advance notice is not required in unusual and compelling circumstances, such as the following cases in which notices are provided within 24 hours following transfer:

- Where the safety of the unaccompanied alien child or others has been threatened;
- Where the unaccompanied alien child has been determined to be a runaway risk (See **Section 1.2.5 Unaccompanied Alien Children Who Pose a Risk of Running Away**);
- Where the interested party has waived such notice.

The unaccompanied alien child is transferred with the child's possessions and legal papers, including, but not limited to:

- Personal belongings;
- Transfer request and tracking forms;
- 30-day medication supply, if applicable;
- All health records; and
- Original documents (including birth certificates).

If the unaccompanied alien child's possessions exceed the amount permitted normally by the carrier in use, the care provider ships the possessions to a subsequent placement of the unaccompanied alien child in a timely manner.

*Revised 08/01/2024*

### 1.4.1 Least Restrictive Setting

Care providers must continuously assess unaccompanied alien children in their care to review whether the children's placements are appropriate. An unaccompanied alien child must be placed in the least restrictive setting that is in the best interests of the child and appropriate to the child's age and individualized needs, subject to considerations regarding danger to self or the community and/or the risk of running away. For children who are initially placed in a least restrictive setting, care providers must provide support services and effective interventions, when appropriate, to help keep a child in the setting.

If a child is placed in a restrictive setting, care providers provide services to facilitate the **unaccompanied alien child's** successful transfer to a less restrictive setting to allow the child to move when they are ready.

A child may not be placed in a secure facility (that is not an RTC) if less restrictive alternatives in the best interests of the child are available and appropriate under the circumstances. A child may be placed in a heightened supervision facility or other non-secure care provider facility as an alternative, provided that the child does not currently pose a danger to others and does not meet criteria for placement in an RTC.

For children with one or more disabilities, in particular, care providers must provide services, supports, and/or accommodations to enable them to be placed in the least restrictive setting in their best interests and the most integrated setting appropriate to their needs. If a care provider believes they are unable to meet the needs of a specific child with one or more disabilities, the care provider must identify any additional resources that ORR may offer to assist in meeting the child's disability-related needs.

Before seeking to step-up or transfer a child with one or more disabilities to a more restrictive facility, the current care provider must document in the child's case file and the child's Individualized Section 504 Plan, their efforts to meet the child's disability-related needs, and the reasons why the care provider is unable to meet the child's disability-related needs. The care provider must also document why it cannot meet the child's needs in their current placement or a more integrated and less restrictive setting with additional services, supports, and/or accommodations provided by ORR. This documentation must be included in the Individualized Section 504 Service Plan and the Evidentiary Record.

For a child with one or more disabilities who is initially placed in or is continuing placement in a restrictive setting, the care provider receiving the child must document their plan for meeting the child's disability-related needs in the Individualized Section 504 Service Plan and the Summary of the *Notice of Placement in a Restrictive Setting*. This documentation should include a description of the services or care that will be provided, why they are necessary for the child, and why they cannot be provided in a less restrictive placement.

When recommending a child currently in a restrictive placement (i.e., heightened supervision) for possible step-up to a more restrictive setting (i.e., secure or RTC), the current care provider must document their efforts to meet the child's disability-related needs. This documentation should be included in the Individualized Section 504 Service Plan and the Evidentiary Record.

### 1.4.2 30-Day Restrictive Placement Case Review

At the time of referral, the ORR Division of Unaccompanied Alien Children Placements, in collaboration with an ORR/Federal Field Specialist (FFS) Supervisor, uses a standardized Intakes Placement Checklist to determine the initial placement of an unaccompanied alien child with a juvenile or criminal background, violent offenses, serious behavioral concerns, and/or potential for running away (see [Section 1.3.2 ORR Placement Designation](#)). The ORR/FFS Supervisor may only decide to place a child in a restrictive facility if clear and convincing evidence supports the placement (see [Section 1.2.4 Secure and Heightened Supervision Facilities](#)).

At a minimum of every 30 days, the care provider staff, in collaboration with the [Case Coordinator](#) and the ORR/FFS, review the placement of a child in a secure, heightened supervision, residential treatment center (RTC), or restrictive out-of-network facility (OON) to determine whether a less restrictive level of care is more appropriate. The ORR/FFS may review the placement earlier than 30 days, particularly if new information indicates an alternative placement is more appropriate. If the decision is to continue the child's restrictive placement, the decision must be supported by clear and convincing evidence that continuing the restrictive placement is required for the safety of the child or others. Care provider staff must document the basis for continued placement in a secure, heightened supervision, RTC, or OON restrictive facility in the child's case file and provide a copy of the *Notice of Placement in a Restrictive Setting* (NOP) form to the child and their attorney of record. The program must also automatically provide a copy of the NOP to the child's parent(s) unless certain exceptions are documented (see [Section 1.2.4](#)). A copy must be provided to the Child Advocate upon request.

For children with identified disabilities in restrictive placements, the 30-day placement review will include and document consideration of the child's disability (or disabilities), the services, supports and/or accommodations needed to meet the child's needs, and whether those services and supports could be provided safely in a less restrictive placement. If the 30-day placement review does not recommend step-down, ORR will document why the child's needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or accommodations. For all children placed in an RTC, the 30-day placement review will also include the written recommendation from the treating licensed psychiatrist or psychologist whether to continue the child's RTC placement. If the child has one or more disabilities, the licensed psychiatrist or psychologist's written recommendation will also discuss whether the child cannot be safely stepped down to a less restrictive setting. During the 30-day placement review, the case manager must update the child's Individualized Section 504 Service Plan to indicate the services implemented to support the child's disability-related needs in accordance with [Section 3.8.3 Individualized Section 504 Service Plan](#).

The FFS will consult with Supervisory ORR staff for children who have resided in a secure or RTC care facility (including an OON RTC facility) for over 90 days. The FFS consults with Supervisory ORR staff regarding the placement every 30 days thereafter until the child is stepped down or **discharged**. A child may only remain in an in-network RTC or OON RTC placement if a licensed psychiatrist or psychologist, consulted by ORR or an ORR program, has determined that they are a danger to self or others (see [Section 1.4.6. Residential Treatment Center and Out-of-Network Placements](#)).

An unaccompanied alien child does not require a review of a secure, heightened supervision, in-network RTC, or OON RTC placement if the child is in custody for less than one month from the date of the initial placement designation to the date of the child's 18th birthday. Children who are in ORR care less than 30 days do not require a review of their placement.

#### Step-ups and Step-downs

Step-ups and step-downs refer to transfers to a more restrictive level of care or to a less restrictive level of care, respectively.

Step-ups may occur when a more restrictive level of care is needed for the safety of the child or others. The care provider Case Manager, Case Coordinator, and ORR/FFS staff the case to determine whether the child's behavior, criminal history, or self-disclosures require placement in a more restrictive environment, using the factors identified in [Section 1.2.4](#). The ORR/FFS must only decide to

place a child in a restrictive facility if clear and convincing evidence supports the placement. The evidence relied upon by the ORR/FFS must be documented in the Evidentiary Record that is uploaded to the child's case file in ORR's online case management system.

Pursuant to **Section 3.8 Children with Disabilities in ORR Custody**, before placing a child with one or more disabilities in a restrictive placement (a secure facility, RTC, heightened supervision facility, or OON restrictive facility), the care provider must document in the child's case file the reasons why the child's needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or accommodations. An integrated setting is one where children with disabilities can interact with children without disabilities to the fullest extent possible. The care provider must also describe and document the services or care that will be provided at the restrictive placement, why they are necessary for the child, and why they cannot be provided in a less restrictive placement. All documentation related to a child's disability or disabilities must be included in the Evidentiary Record and the Individualized Section 504 Service Plan.

If a child is being considered for placement into an RTC or secure facility based on danger to self or danger to others and the child was not previously identified as having a disability, the child must be referred for an evaluation to determine whether they have one or more disabilities. All documentation related to a child's referral for evaluation for a possible disability or disabilities must be included in the Evidentiary Record.

The child may be transferred while awaiting the evaluation, but the referral must occur before the transfer is requested. The placement of the child need not be delayed, however, pending the results of the evaluation.

If a child self-discloses criminal or violent history to other children in care or to care provider staff, ORR investigates the veracity of the claim with the assistance of the care provider. ORR may contact federal, state, and local law enforcement to determine the veracity of the self-disclosed criminal history and request assistance in contacting foreign law enforcement agencies where alleged crimes or incidents took place outside of the United States. ORR may also work with mental health professionals and other specialists as appropriate to determine whether the child's claims are credible.

When a child is stepped up to a restrictive setting (secure, heightened supervision, RTC, or restrictive OON facility), the child must be provided with an NOP in a language that the child understands within 48 hours of admission. The NOP must be automatically provided to the child's attorney, if they have one, within 48 hours of admission to the restrictive facility, and to their parent unless certain exceptions are met (see **Section 1.2.4**).

Step-downs occur when ORR determines there is no longer clear and convincing evidence that the child poses a danger to self or others, or no longer presents a runaway risk (for heightened supervision step downs only). ORR also takes into consideration the independent hearing officer's decision in a risk determination hearing about the child's level of danger when assessing the child's placement and conditions of placement. In making a step-down decision, ORR considers criteria identified in making a restrictive placement and takes into consideration any mitigating factors based on an assessment of the child's current functioning and behavior, previous conduct, self-disclosures, and criminal/delinquent history. The care provider documents the underlying assessment used to make this determination in the child's case file, and through the NOP form if the child is stepped down to a heightened supervision facility.

Unaccompanied alien children placed in a secure facility (including an RTC) are not automatically stepped down to a heightened supervision facility. Rather, ORR evaluates the child's case and steps the child down to the least restrictive setting that is in the best interest of the child and meets their individual needs, which may be a heightened supervision facility or a non-restrictive level of care (such as a shelter).

Unaccompanied alien children determined to have committed sexual abuse, where there is coercion by overt or implied threats of violence against another person and/or there is an immediate danger to others, may not be stepped down below heightened supervision unless the ORR/FFS and the receiving care provider can document specific steps to protect other unaccompanied alien children, staff, and the community.

If the care provider and ORR/FFS determine that step down to a non-restrictive level of care (such as an **ORR shelter**) is appropriate, the care provider must use the ORR process for transferring the child to another care provider. The care provider must notify the U.S. Department of Homeland Security (DHS), the child's attorney of record, legal service provider, and/or child advocate within a reasonable period of time, and, if applicable, apply for a change of address for a timely and safe transport.

The existence of a report of a significant incident must not be used as a basis for an unaccompanied alien child's step-up to a restrictive placement or as the sole basis for a refusal to step a child down to a less restrictive placement. Reports of significant incidents may be used as examples or citations of concerning behavior. However, the existence of a report itself is not sufficient for a step-up or a refusal to step-down.

For an unaccompanied alien child with one or more disabilities, consistent with section 504 of the Rehabilitation Act, 29 U.S.C. 794(a), ORR's determination whether to place an unaccompanied alien child in a restrictive placement must include consideration whether there are any reasonable modifications to the policies, practices, or procedures of an available less restrictive placement or any provision of auxiliary aids and services that would allow the unaccompanied alien child to be placed in that less restrictive facility. ORR's consideration of reasonable modifications and auxiliary aids and services to facilitate less restrictive placement must also apply to transfer decisions and will be incorporated into restrictive placement case reviews.

*Revised 05/19/2025*

### 1.4.3 Long Term Care

In some cases, **unaccompanied alien children** stay in ORR custody for four (4) months or more. ORR considers a stay of four (4) months or longer to be an "extended stay" case. Extended stay cases generally occur when the child has no identified sponsor and:

- A legal service provider or attorney has screened the child as eligible for immigration relief; or
- Another reason prevents return of the unaccompanied alien child to the home country, such as the child's country of origin is in a state of emergency, indicating that the child will likely not be repatriated for an extended period of time.

If there is an indication that an unaccompanied alien child may fall into this extended stay category, the care provider makes a recommendation to ORR regarding long-term care placement. Care providers try to minimize the number of transfers for a child in order to facilitate continuity of relationships with caregivers.

Care providers continue to assess a child placed in long-term foster care to ensure that best efforts are being made to move the unaccompanied alien child toward release from ORR custody into a more permanent arrangement.

*Revised 08/01/2024*

### 1.4.4 Transfer to Long-Term Foster Care

Prior to a transfer to long-term foster care (LTFC), care providers must notify all stakeholders such as legal service providers (LSPs), attorneys of record, child advocates, and family members. The referring care provider requests from the LSP a recommendation of preferred locations for placement for the child at least 14 calendar days prior to initiating the Transfer Request process. The LSP meets with the child within 10 business days of the referring care provider's request to prepare the preferred locations recommendation following **Section 1.2.6 Long-Term Foster Care**. The LSP's recommendation must be based on the child's potential for immigration relief, type of immigration relief, and status of court hearings or relief petitions. The LSP must complete the recommendation within 14 calendar days of the initial notification from the **case manager** that the child is being considered for transfer to LTFC. In the event the child does not consent to the LSP using children's information to submit an LSP recommendation to ORR for transfer, the LSP would inform the requesting care provider that the child has not consented.



The case manager and case coordinator (and other ORR staff, if possible) review the LSP's recommendation to inform the child's transfer placement location and makes referrals to LTFC providers. The LSP's recommendation is one factor ORR considers in making the placement determination for the child (see [Section 1.2.6](#)). When possible, taking into consideration the placement factors in [Section 1.2.6](#), ORR will make a best effort to place the child in a location where their immigration case is best served. If the locations included in the LSP's recommendation are not available, a Child Advocate referral must be made (see [Section 2.3.4 Child Advocates](#)). Additionally, the case must be staffed with the ORR/Federal Field Specialist (ORR/FFS) to determine whether to proceed with the LTFC transfer and to determine the placement option that is in the child's best interests.

Reviewing LTFC providers have 14 calendar days from receipt of the LTFC referral to accept the referral or notify ORR of a need for an extension to identify whether they can accept the referral. After a receiving LTFC provider accepts the referral, the receiving LTFC provider immediately informs the child's LSP to ensure arrangements are made for legal services, including representation, when possible, for the child in the new jurisdiction. The transfer process may proceed while the LSP arranges for legal services for the child.

*Revised 01/16/2025*

## 1.4.5 Group Transfers

Group transfers (the **transfer** of more than one (1) unaccompanied alien child at a time) may occur because of changes in a **care provider's** bed capacity, through changes in program requirements that would eliminate a care provider from the list of approved facilities, or through an **emergency** event or natural disaster. ORR tries to minimize the number of transfers resulting from bed capacity limitations. ORR considers the circumstances of the individual unaccompanied alien child's case, including the progress of the sponsorship effort and the status of the legal case, when identifying children for group transfers. For group transfers, the care provider facility follows ORR guidance for transfers in [Section 1.4 Transfers within the ORR Care Provider Network](#).

*Revised 08/01/2024*

## 1.4.6 Residential Treatment Center and Out-of-Network Placements

### Residential Treatment Center Placements

An **unaccompanied alien child** with serious mental health or behavioral health issues may only be placed into a **residential treatment center** (RTC) if the child is evaluated and determined to be a danger to self or others by a licensed psychologist or psychiatrist, consulted by ORR or an ORR funded care provider, which includes a determination by clear and convincing evidence documented in the child's case file, including documentation by a licensed psychologist or psychiatrist that placement in an RTC is appropriate.

**Care providers** request a transfer to an RTC for an unaccompanied alien child with serious mental health or behavioral health issues as is consistent with the requirements above for placing a child in an RTC. The care provider facility must review the placement of a child in an RTC every 30 days (see [Section 1.4.2 30-Day Restrictive Placement Case Review](#)).

### Out-of-Network Placements

ORR may place a child at an out-of-network (OON) placement (which may be restrictive or non-restrictive), subject to [Section 1.4.1 Least Restrictive Setting](#), under certain limited circumstances, such as an OON RTC or a temporary stay at hospital (for example, for surgery).

Unaccompanied alien children are separated from delinquent offenders in OON placements (except those unaccompanied alien children who meet the requirements for a secure facility placement in [Section 1.2.4 Secure and Heightened Supervision Facilities](#) or an RTC placement).

Subject to the note below, children placed in an OON facility will generally receive or have arranged the services established under **Section 3.3 Care Provider Required Services**.

The ORR **Case Manager** who is assigned to a child placed in an OON facility will administer the case management services outlined in **Section 2.3.2 Case Managers**. The Case Manager maintains weekly contact with the child's out-of-network provider to ensure the Case Manager and ORR/FFS are receiving weekly updates on the child's progress. The Case Manager provides updates to the **attorney of record** according to **Section 5.10.3 Information Sharing with LSPs, Attorneys of Record, and Child Advocates**.

Additionally, ORR shall require OON placements to develop behavior management strategies that include evidence-based, trauma-informed, and linguistically responsive program rules and behavior management policies that take into consideration the range of ages and maturity in the OON placement and that are culturally sensitive to the needs of each unaccompanied alien child (see **Section 3.3.13 Behavior Management**). ORR shall require OON placements to not use any practices that involve negative reinforcement or involve consequences or measures that are not constructive and are not logically related to the behavior being regulated. OON placements shall not:

- Use or threaten use of corporal punishment, significant incident reports as punishment, unfavorable consequences related to sponsor unification or legal matters (e.g., immigration, asylum); use forced chores or work that serves no purpose except to demean or humiliate the child; forced physical movement, such as push-ups and running, or uncomfortable physical positions as a form of punishment or humiliation; search an unaccompanied alien child's personal belongings solely for the purpose of behavior management; apply medical interventions that are not prescribed by a medical provider acting within the usual course of professional practice for a medical diagnosis or that increase risk of harm to the unaccompanied alien child or others; and
- Use any sanctions employed in relation to an individual unaccompanied alien child that adversely affect an unaccompanied alien child's health, or physical, emotional, or psychological well-being; or deny unaccompanied alien children meals, hydration, sufficient sleep, routine personal grooming activities, exercise (including daily outdoor activity), medical care, correspondence or communication privileges, religious observation and services, or legal assistance.

Due to the operational realities of working with OON facilities, if the OON placement is unable to provide the required services to a child, see generally Section 3.3, ORR will coordinate with the in-network care provider facility to provide the services to the child if feasible, or if the in-network facility is unable to provide the services, ORR may itself arrange for the services to the child.

However, there may be circumstances in which arranging for or providing a particular service is not practicable but placement in a specialized facility is still in an individual child's best interest. In such cases, ORR will consult with independent experts, including health care providers, to determine the extent to which the minimum services may be provided for or arranged. ORR will document the actions taken with respect to required services, including any deviations from services that are required under Section 3.3 along with the underlying reasons for the deviation and why the OON placement is in the best interest of the child.

For children with identified disabilities who have an Individualized Section 504 Service Plan developed pursuant to Section 3.8, ORR will ensure that the services, supports, and reasonable accommodations and modifications responsive to the child's disability-related needs, which are specified in the child's Individualized Section 504 Service Plan, are provided at the OON placement.

In general, ORR does not place an unaccompanied alien child at an OON facility if it determines that a service which is required for the child's best interests, including appropriate behavior management standards, cannot be provided at the facility.

OON RTCs must apply the same standards and criteria for transfer or placement into an in-network RTC. ORR may transfer a child to an OON RTC facility under the following conditions:

- A licensed clinical psychologist or psychiatrist consulted by ORR or an ORR-care provider facility has determined that the child requires a level of care only found in an OON RTC, or that an OON RTC facility would best meet the child's identified

needs;

- The current ORR care provider has fully explored placement in ORR care provider facilities, upon recommendation by the licensed clinical psychologist or psychiatrist consulted by ORR, but the child's needs exceed the current capability of the ORR care provider facilities with open bed space; and
- The ORR Federal Field Specialist (FFS) Supervisor has confirmed that recommended placements have been exhausted and that the child continues to need a level of care that can only be provided in an OON RTC facility.

Once it is determined that an OON placement is in the **best interests** of the child and can meet the child's individualized, specialized needs and prior to the physical transfer of the child to the OON facility, the permanent care provider must notify the child's attorney. While the child will be physically located at an OON facility, the child will remain on the roster of the in-network facility and an ORR/FFS will monitor the child's progress and ensure the child is receiving required services.

Where the child is being transferred to an OON restrictive setting, the child is notified at the time of transfer that they are being transferred to the OON facility. The child, along with their attorney, is provided with a **Notice of Placement in a Restrictive Setting (NOP)** within 48-hours of being admitted to the OON **restrictive placement** (see **Section 1.4.2**). The child's parent and/or **legal guardian** is also provided a copy of the NOP unless the situation meets the parental notification exceptions in **Section 1.2.4**.

The child's placement will be reviewed by care provider staff, in collaboration with the **Case Coordinator** and the **ORR/FFS**, at minimum of every 30 days to determine whether a less restrictive level of care is more appropriate. (See **Section 1.4.2**). The child has the right to request reconsideration of their placement prior to the 30-day review via the procedures outlined in **Section 1.4.7 Requesting Reconsideration of a Secure or RTC Placement Designation**.

OON providers are vetted prior to placement via state licensing authorities to ensure the program is in good standing and is complying with all applicable state welfare laws and regulations and state and local building, fire, health, and safety codes.

*Revised 05/19/2025*

## 1.4.7 Requesting Reconsideration of a Restrictive Placement

**Unaccompanied Alien Children** placed in a restrictive placement, including a secure facility, a heightened supervision facility, a **residential treatment center** (RTC), or a restrictive **out-of-network (OON) facility** can seek reconsideration of their **placement** through the **Placement Review Panel (PRP)**. Children are notified upon receipt of their initial **Notice of Placement in a Restrictive Setting (NOP)** that they may request reconsideration immediately or anytime during their placement in a restrictive placement. Children are informed of the procedures for requesting a PRP during their review of their NOP.

The PRP is a three-member panel consisting of ORR's senior-level career staff with requisite experience in child welfare, including restorative justice, adverse childhood experiences, special populations, and/or mental health. Panel members serving on a PRP for an individual child must not have been involved in the initial decision to place the child in a restrictive placement. Once they have served on a child's PRP, panel members may not serve again on that child's PRP for another evaluation of that child's continued placement in a restrictive setting.

The child can request placement reconsideration by either notifying the **case manager** or by instructing their representative (attorney or **child advocate**) to request a panel review. Where the child does not have an attorney, ORR must encourage the care provider facility to seek assistance for the child from a contracted legal service provider or child advocate. The **care provider** or child's representative requests the panel review by emailing **UAChearings@acf.hhs.gov**.

The child can seek review of their placement by either of the following:

- Panel consideration of written documents only; or
- Panel consideration of written documents and a live hearing before the panel.



ORR must permit the child or the child's counsel to review the evidence in support of step-up or continued restrictive placement and any countervailing or otherwise unfavorable evidence within a reasonable time before the PRP review is conducted. ORR must also share the child's complete case file apart from any legally required redactions with their counsel within a reasonable timeframe to be established by ORR to assist in the legal representation of the child.

ORR must convene the PRP within seven (7) days of an unaccompanied alien child's request for a hearing. ORR may institute procedures to request clarification or additional evidence if warranted, or to extend the seven (7)-day deadline as necessary under specified circumstances.

Only written documents provided for evidence at the time of the request for a PRP and the written statement provided by the child and/or their representative will be considered by the panel in making the recommendation. ORR carries the burden of demonstrating by **clear and convincing evidence** that sufficient grounds exist for the **restrictive placement**. Clear and convincing means the conclusion is highly and substantially more likely to be true than untrue. Here, this means that the panel must demonstrate that the available evidence and facts make it highly and substantially more likely than not that placement in the proposed setting is appropriate. The panel's review considers whether the evidence supporting the most recently issued NOP decision sufficiently demonstrates that the child is a danger to self or others and continues to meet the criteria as stated on the NOP. Should the child opt to have a hearing, the child, or their representative, may call live witnesses or cross-examine ORR's witnesses. However, such witnesses must appear voluntarily as the PRP cannot compel witnesses to attend hearings or provide testimony. At the PRP hearing, a child must be provided access to interpretation services in their native or preferred language, depending on the child's preference and in a way that they effectively understand.

The panel makes one of the following decisions:

- Affirm the NOP decision to continue the current placement;
- Remand the matter to the FFS for further consideration based on the panel's recommendations; or
- Reverse the NOP decision with instructions for the **transfer** of the child to another facility.

The PRP's decision, which must be in writing and in the child's native or preferred language, is final. However, a child who receives an adverse decision by a PRP can initiate a new request upon receipt of a new NOP that continues their current placement or transfer to another restrictive facility. The PRP must issue its written decision within seven (7) days of a hearing and submission of evidence or, if no hearing or review of additional evidence is requested, within seven (7) days following receipt of an unaccompanied alien child's written statement. ORR may institute procedures to request clarification or additional evidence if warranted, or to extend the seven (7)-day deadline as necessary under specified circumstances.

*Revised 08/01/2024*

## 1.4.8 Transfers for *Saravia* Class Members

For a *Saravia* class member (see **Section 1.3.6 *Saravia* Intakes Screening and Placement Determinations** for a definition of class membership) who does not prevail in his or her *Saravia hearing* — meaning an immigration judge has ruled that the child is a danger to self or others and/or a flight risk and must remain in ORR care and custody — ORR follows its standard policies and procedures for **transfer** of the **unaccompanied alien child** (see **Section 1.4 Transfers within the ORR Care Provider Network**).

Conversely, if a *Saravia* class member returns to ORR custody after having prevailed at his or her *Saravia hearing*, the unaccompanied alien child is placed in a **shelter** if there is a shelter where the **care provider** is willing and able to accept the child. If the unaccompanied alien child was in ORR custody in a restrictive setting (i.e., secure facility, including residential treatment center, or heightened supervision) prior to prevailing at the *Saravia hearing* and cannot be released to the child's prior sponsor (see **Section 2.8.7 Release of *Saravia* Class Members**), the child must be transferred to a shelter facility if there is such a facility able and willing to accept the child.

Likewise, for a *Saravia* class member who prevailed at their *Saravia* hearings, ORR does not use the previous allegations of gang affiliation or involvement that led to the arrest by a federal agency as the basis for **placement** in a restrictive setting, or to delay release (see **Section 2.8.7**).

Revised 08/01/2024

## 1.5 Placement Inquiries

Individuals looking for an **unaccompanied alien child** who may be in ORR custody may contact the **ORR National Call Center, at 1 (800) 203-7001**, and leave a message that includes the unaccompanied alien child's information, caller's name, contact information, and relationship to the child. (This hotline is operated by an ORR grantee.)

Revised 9/06/2016

### 1.5.1 ORR National Call Center

The ORR National Call Center staff reviews the information to see if the unaccompanied alien child is currently in ORR custody. The call center staff contacts the caller and notifies them whether or not the child is in ORR custody, taking safety issues into consideration, as described below.<sup>5</sup>

If the unaccompanied alien child is in ORR custody, the call center staff does not provide information to the caller regarding where the child is located or with which **care provider** until communication is deemed safe and appropriate.

The steps in the process include:

- The call center staff notifies the corresponding care provider with the caller's name, contact information, and relationship to the unaccompanied alien child.
- The care provider determines whether the individual is a safe and approved contact. As deemed appropriate and following ORR's procedures, the care provider may facilitate communication between the caller and the unaccompanied alien child.
- The care provider contacts the individual and informs them that the unaccompanied alien child is safe and in ORR custody.

Revised 01/13/2025

## 1.6 Determining the Age of an Individual without Lawful Immigration Status

The **Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA)** (PDF) instructs the U.S. Department of Health and Human Services (HHS) to devise age determination procedures for individuals without lawful immigration status in consultation with the U.S. Department of Homeland Security (DHS). **To carry out the TVPPRA provision, HHS and DHS worked jointly to develop the age determination policies and procedures in this section.**

Typically, DHS is the agency that apprehends individuals without lawful immigration status, including unaccompanied alien child, while HHS is the agency responsible for the care and custody of children transferred to its care. HHS authority to provide care and custody applies only to individuals who have not attained 18 years of age. To meet the definition of an unaccompanied alien child and remain in ORR custody, an individual must be under 18 years of age.

Each agency acknowledges the challenges in determining the age of individuals in custody. These challenges include, but are not limited to:

- Unavailable documentation;
- Contradictory or fraudulent identity documentation and/or statements;
- Physical appearance of the individual; and
- Diminished capacity of the individual.

The TVPRA requires the age determination procedures, at a minimum, to take into account multiple forms of evidence. Accordingly, under these procedures, each case must be evaluated carefully based on the totality of all available evidence, including the statement of the individual in question.

*Revised 08/01/2024*

### **1.6.1 Unaccompanied Alien Children in HHS Custody**

The U.S. Department of Health and Human Services (HHS) may make age determinations of an unaccompanied alien child when they are in HHS custody if there is a reasonable suspicion that a child is 18 years or older. If ORR reasonably concludes that an individual is an adult, despite the individual's claim to be under the age of 18, ORR treats such person as an adult for all purposes.

In the event there is conflicting evidence regarding the age of an unaccompanied alien child in HHS custody, the HHS funded care provider case worker must immediately notify the ORR/Federal Field Specialist (FFS). The FFS will make the age determination based on their review of the multiple forms of evidence collected by the care provider. Until the age determination is made, the unaccompanied alien child is entitled to all services provided to unaccompanied alien children in HHS care and custody.

There may be occasions when an unaccompanied alien child's age is questioned at the time of admission to an HHS funded care provider facility during the intakes process. In those cases, the case manager does not complete the intakes process, but consults with the HHS FFS to make the age determination.

*Revised 08/01/2024*

### **1.6.2 Instructions for Age Determinations**

Procedures for determining the age of an individual must take into account the totality of the circumstances and evidence, including the non-exclusive use of radiographs, to determine the age of the individual. ORR may require an individual in ORR custody to submit to a medical or dental examination, including X-rays, conducted by a medical professional or to submit to other appropriate procedures to verify their age. If ORR subsequently determines that such an individual is an unaccompanied alien child, the individual will be treated in accordance with ORR's UAC Bureau regulations.

ORR considers multiple forms of evidence in making age determinations, and determinations are made based upon a totality of evidence. ORR may consider information or documentation to make an age determination, including but not limited to:

1. Documentation:
  - Official government-issued documents, including birth certificates. If there is no original birth certificate, certified copy, photocopy or facsimile copy of a birth certificate acceptable to ORR, ORR consults with the consulate or embassy of the individual's country of birth to verify the validity of the birth certificate presented.
  - Authentic government-issued documents issued to the bearer.
  - Other documentation, such as baptismal certificates, school records, and medical records, that indicate the unaccompanied alien child's date of birth.

2. Statements by individuals (including the unaccompanied alien child) determined to have personal knowledge of the unaccompanied alien child's age and who HHS concludes can credibly attest to the age of the unaccompanied alien child:
  - Statements provided by the unaccompanied alien child regarding their age or birth date. (An unaccompanied alien child's uncorroborated declaration regarding age is not used as the sole basis for an age determination.)
  - Sworn affidavits from parents or other relatives as to the individual's age or birth date, if such persons can be identified and contacted.
  - Statements from parents or **legal guardians**
  - Statements from other persons apprehended with the individual.
  - Statements from other persons.
  - Information from another government agency (Federal, State, local or foreign)
  - State/local arrest records.
  - Child welfare agency records.

3. Medical Age Assessments:

Medical Age Assessments include both the use of imaging technology, such as radiography, and physical examinations.

Regarding these assessments:

- Medical age assessments should not be used as a sole determining factor but only in concert with other factors.
- A medical professional experienced in age assessment method(s) must perform the examination, taking into account the individual's ethnic and genetic background.
- Dental maturity assessments using radiographs may be used to determine age, but only in conjunction with other evidence.
- As no current medical assessment method can determine an exact age, best practice relies on the estimated probability that an individual is 18 or older. The examining doctor must submit a written report indicating the probability percentage that the individual is a child or an adult.
- The **ORR/Federal Field Specialist (FFS)** supervisor must review the determination regarding the age submitted by the examining doctor.
- If an individual's estimated probability of being 18 or older is 75 percent or greater according to a medical age assessment, and this evidence has been considered in conjunction with the totality of the evidence, ORR must determine that the individual is 18 years or older and may refer the individual to the U.S. Department of Homeland Security (**DHS**). The 75 percent probability threshold applies to all medical methods and approaches identified by the medical community as appropriate methods for assessing age.
- Ambiguous, debatable, or borderline forensic examination results are resolved in favor of finding the individual is a child.

The FFS compiles all pertinent information (e.g., how reasonable suspicion was raised that the subject is over 18, the information referenced, the individuals or agencies consulted, statements and conclusions) and documents it in a memorandum for review and approval by the FFS Supervisor.

FFS then will forward the memo to the care provider facility case manager to be included in the unaccompanied alien child's case file and to the ICE Detention and Removal Office (DRO) Field Office Juvenile Coordinator (FOJC) for inclusion in the unaccompanied alien child's A-file.

At any time, an unaccompanied alien child in ORR care or their designated legal representative may present new information or evidence that they are 18 or older for re-evaluation of an age determination. New information will be reviewed and evaluated by the FFS and, if necessary, the FFS Supervisor, in a timely manner and shared with the DRO FOJC to determine if the current placement is appropriate.

If the new information or evidence indicates that an individual who is presumed to be an unaccompanied alien child is actually an adult, then HHS will coordinate with the assigned FOJC to transfer the individual out of ORR custody.

Revised 08/01/2024

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## Footnotes

1. Delinquency refers to behavior by a child that would be considered a crime if performed by an adult.
2. ORR notes that the Heightened Supervision Facility placement requirements conform to the standards that the U.S. District Court concluded were applicable to such placements under the *Flores* Settlement Agreement. *Flores v. Garland*, No. CV 85-4544-DMG (AGRX), 2024 WL 3467715, at \*6 (C.D. Cal. June 28, 2024) (applying paragraph 21 to “medium security” facilities).
3. Refers to behavior by a child that would be considered a crime if performed by an adult.
4. Other circumstances which would result in a longer stay, such as the child’s country of origin is in a state of emergency, indicating that the child will likely not be repatriated for an extended period of time.
5. ORR National Call Center (ORRNCC) also has other functions including assisting potential **sponsors** in beginning the safe and timely release process (see **Section 2.2.3 The Family Reunification Application**); linking released children and their families or sponsors with services in their local communities (see **Section 2.8.4 Safety and Well-Being Follow Up Call**); and fielding calls from released children, family members, sponsors, **legal service providers**, child advocates, and other members of the community requesting assistance or reporting concerns. The ORRNCC can provide assistance with filing a “change of address” and provide vaccination records upon request. The ORRNCC creates safety plans for children or sponsors experiencing domestic violence, child abuse or **neglect**, self-harm (including suicide attempts), placement disruption, and human trafficking. The ORRNCC reports, as appropriate, matters of concern to ORR, local law enforcement, and/or local child protective services and refers potential victims of human trafficking to the Office on Trafficking in Persons. (See **Section 6.2.1 Referrals and Eligibility** and **6.8.6 Notification of Concern**).

# Exhibit D-4

# ORR Unaccompanied Alien Children Bureau Policy Guide: Section 3



## Services

Current as of: May 19, 2025

### 3.1 Summary of Services

**Standard** and **secure care provider facilities**, as well as **out-of-network (OON) facilities** providing these levels of care, must be licensed by an appropriate state agency, or meet the State's licensing requirements if located in a State that does not allow State licensing of programs providing or proposing to provide care and services to **unaccompanied alien children**, and must meet the Office of Refugee Resettlement's (ORR) requirements to ensure a high level of quality care with dignity, respect, and special concern for their particular vulnerability. All care provider facilities provide children with classroom education, health care, socialization/recreation, vocational training, mental health services, access to legal services, access to **Child Advocates** where applicable, and case management. Likewise, OON facilities must provide all services required of in-network care provider facilities, as discussed at Section 1.4.6 Residential Treatment Center and Out-of-Network, subject to the exceptions provided in the policy. Care provider facilities also undertake ongoing efforts to identify and assess relatives or other individuals in the United States as **sponsors** to whom children can be safely **released**. **Care provider facilities'** case management teams use standardized screening tools to assess children for mental health and victims of trafficking issues. Care provider facilities comply with all State child welfare laws and regulations and all State and local building, fire, health, and safety codes.

*Revised 05/19/2025*

### 3.2 Care Provider Admissions and Orientation for Unaccompanied Alien Children

Once the care provider has physical custody of the unaccompanied alien child, the care provider must complete the admissions and orientation process. Care provider staff must be trained in techniques for child-friendly and **trauma-informed** interviewing, assessment, observation and other techniques. Care providers must also be trained to identify suspected victims of trafficking and children who have been smuggled into the country. Foster parents are not responsible for conducting admissions procedures, but they must be trained on the above topics in order to identify issues that may arise and report them to the care provider.

Care providers who operate secure or **heightened supervision facilities** must ensure that the unaccompanied alien children initially placed or **transferred** to their facility are provided a notice in a format and language accessible to the child as to why they were placed in the facility.

If the care provider staff determines during the admissions and intake process that the unaccompanied alien child's health or life is in imminent risk or their condition places the safety of others at imminent risk, the care provider must contact 9-1-1 for crisis response and transportation to the nearest emergency room.



If the care provider determines that the unaccompanied alien child requires medical attention, the care provider arranges for the unaccompanied alien child to be evaluated by a medical and/or mental health provider as soon as possible upon the unaccompanied alien child's arrival at the facility.

Where available, the care provider or any stakeholder may request the appointment of a Child Advocate for an unaccompanied alien child who is a victim of trafficking or is found to be especially vulnerable (See [Section 2.3.4 Child Advocates](#)). ORR decides whether to appoint a Child Advocate.

*Revised 8/1/16*

### 3.2.1 Admissions for Unaccompanied Alien Children

When a child is first admitted into ORR care, the care provider must immediately ensure the physical and mental well-being of the child after receiving physical custody of a child by:

- Screening for signs/symptoms of illness or mental distress and referring the child for medical care/testing as needed;
- Asking the child about any healthcare conditions or needs they have (including disabilities, allergies, diseases, mental and behavioral health issues, as well as medications) in the child's native or preferred language;
- Reviewing all of the child's records for health issues/needs, including but not limited to those identified while in Customs and Border Protection (CBP) care to identify any immediate needs;
- Ensuring that the child receives appropriate food and beverages upon arrival (after being asked about allergies) at the care provider facility and, if possible, before interacting with other children;
- Ensuring that the child bathes or showers, with assistance if required due to **disability** or young age, within two (2) hours of entering the care provider facility and, if possible, before interacting with other children;
- Providing the child, at a minimum, with the following items: clean clothing and bedding, and personal hygiene items;
- Assisting the child in contacting family members or other relatives if contact is considered safe following ORR and the care provider's internal safety policies and procedures; and
- Creating an inventory list of any cash and other property in the child's possession upon admission. The child may retain some personal property if deemed appropriate by the care provider and/or foster parent or if required under state licensing regulations.

If a healthcare concern is identified through records review or from discussions with the child, parent or primary caregiver, the designated staff immediately notifies the **Case Manager** and care provider medical team.

See also [Section 5.8 Reporting Child-Level Events and Program-Level Events](#) for information gathered at intakes that may require reporting a **Child-Level Event**.

Within two (2) business days of admission into ORR care, the care provider must also ensure that the child receives a complete initial medical exam (IME), including screening for infectious diseases, by a licensed mid-level healthcare professional or higher (e.g., physicians, physician assistants, nurse practitioners).

When a child is transferred from one care provider to another care provider, the receiving care provider must immediately assess the physical and mental well-being of the child after receiving physical custody of a child by:

- Screening for signs/symptoms of illness or mental distress and referring the child for medical care/testing as needed;
- Asking the child about any healthcare conditions or needs they have (including disabilities, allergies, diseases, mental and behavioral health issues, as well as medications) in the child's native or preferred language;
- Reviewing all of the child's records for health issues/needs, including but not limited to those identified while in CBP care to identify any immediate needs;



- Ensuring that the child receives appropriate food and beverages upon arrival at the care provider facility;
- Ensuring that the child has the opportunity to bathe or shower;
- Providing the child with clean bedding, and, as needed, clean clothes and personal hygiene items;
- Reviewing the existing list of vetted family/sponsors contained in the transfer packet and assisting the child in contacting family members or other relatives on the list, if contact is considered safe, following ORR and the care provider's internal safety policies and procedures; and
- Creating an inventory list for all cash and other property in the child's possession upon admission. The child may retain some personal property with them if deemed appropriate by the care provider and/or foster parent or if required under state licensing regulations.

If a healthcare concern is identified through records review or from discussions with the child, parent, **legal guardian**, caregiver or potential sponsor, the designated staff immediately notifies the Case Manager and care provider medical team.

To identify any of the child's immediate needs or issues, a trained staff member with the care provider must use the *Initial Intakes Assessment* to interview the child within 24 hours of the child's admission to the facility, whether it is the first admission into care or a transfer between facilities. The *Initial Intakes Assessment* guides the interviewer through a series of questions to obtain biographic information (to include information about family members), migration history, information on any immediate medical or mental health concerns (including substance use), current medications, and any concerns about personal safety that the child may have at that time.

Prior to interviewing the child using the *Initial Intakes Assessment*, the care provider informs the child that providing honest and complete answers to all assessments is essential. The care provider also informs the child that self-disclosure of previously unreported criminal history or violent behavior to any other children, care provider staff, ORR, or others, may result in the child's transfer to another care provider facility and may affect their release.

If the child's responses to questions during the *Initial Intakes Assessment*, IME, or other assessments indicate the possibility that the child may have been a victim of human trafficking or labor exploitation, the care provider notifies the Office of Trafficking in Persons (OTIP) within 24 hours. This is essential to ensuring that the children receive the services and supports to which they may be entitled.

If the child's responses to questions during the *Initial Intakes Assessment* identify any preexisting medical, mental health, or cognitive concerns, the interviewer must notify the Case Manager and care provider medical team immediately.

If the child's responses raise suspicions that the child's health or life is at imminent risk or his/her condition places the safety of others at imminent risk, the interviewer calls 9-1-1 for crisis response and transportation to the nearest emergency room and follows **significant incident** reporting procedures (see **UAC MAP Section 5.8.2 Significant Incidents**).

The Disclosure Notice fully explains the child's rights to confidentiality and limits to confidentiality of information, and must be reviewed with the child:

- Prior to the completion of the UAC Assessment within the child's first five (5) days in care (See **Section 3.3.1 UAC Assessment and Case Review**);
- At the beginning of the child's first counseling session the child receives;
- May be reviewed again with the child at the **clinician's** discretion (See **Section 5.9.1 Requirement to Inform Children of Limits to Confidentiality** for discussion of the Disclosure Notice in detail); and
- Must also be reviewed again when a child transfers to a new facility.

Revised 08/01/2024

### 3.2.2 Orientation

Care providers must have a standardized and comprehensive orientation that is provided to all admitted unaccompanied alien children. The orientation must be provided within 48 hours of admission and must be presented in a fashion that is appropriate for the age, culture, and language of the child. The comprehensive orientation regarding program purpose, services, rules (provided in writing and orally), expectations, their rights in ORR care, and the availability of legal assistance, and information about U.S. immigration and employment/labor laws in simple and non-technical terms and in a language and manner that the child understands, if practicable. The orientation must be provided in formats that are accessible to unaccompanied alien children who are limited English proficient, deaf, visually impaired or otherwise disabled, as well as those who have limited reading skills.

Care provider facilities must notify the unaccompanied alien children that care provider facilities must accommodate the unaccompanied alien children's language needs while they remain in ORR care.

If the unaccompanied alien child is not literate, the care provider must verbally explain all the documents in the unaccompanied alien child's native or preferred language. If forms are not translated into a language that the unaccompanied alien child can read, to have a **qualified interpreter** orally translate or sign language translate and explain all the documents in the child's native or preferred language, depending on the child's preference, and confirm with the child that they fully comprehend all material. Care providers lacking staff who speak an unaccompanied alien child's native or preferred language must make reasonable efforts to utilize a qualified interpretation or **qualified translator** for the unaccompanied alien child's orientation. In cases where no such service exists, or is unavailable, then care providers must consult with the **ORR/Federal Field Specialist (FFS)**, the **Case Coordinator**, and other relevant stakeholders to create and implement a strategy for communicating with the unaccompanied alien child as effectively as possible and ensuring meaningful access to the care provider's programs and activities.

As part of the orientation, the care provider must also provide the unaccompanied alien child a tour of the facility and note emergency evacuation routes and exits.

The orientation must include the following information:

- an explanation of the nature of the unaccompanied alien child's custody in ORR;
- the care provider's rules, responsibilities, and procedures;
- the unaccompanied alien child's rights and responsibilities, including general legal-related information;
- the care provider's behavior management policies;
- the care provider's grievance policies and procedures;
- emergency and evacuation procedures; and
- other policies and procedures to help the child adjust to the new setting

*Revised 08/01/2024*

### 3.3 Care Provider Required Services

Care providers must comply with all applicable State child welfare laws and regulations (such as mandatory reporting of abuse) and all State and local building, fire, health, and safety codes. Care providers must deliver services in a manner that is sensitive to the age, culture, native language, and needs of each child. Care providers must develop an **individual service plan** for the care of each child.

Care providers are also required to maintain records of **case files** and make regular reports to ORR. Care providers must have accountability systems in place which preserve the confidentiality of client information and protect the records from unauthorized use or disclosure (See Section **5.9.1 Requirement to Inform Children of Limits to Confidentiality**).

Care providers must provide the following minimum services<sup>1</sup> for each child in their care in a manner that is sensitive to the age, culture, native or preferred language, and the complex needs of each unaccompanied alien child:

- Proper physical care and maintenance, including suitable living accommodations, food that is of adequate variety, quality, and in sufficient quantity to supply the nutrients needed for proper growth and development, which can be accomplished by following the U.S. Department of Agriculture's Dietary Guidelines for Americans, and appropriate for the child and activity level, drinking water that is always available to each unaccompanied alien child, appropriate clothing, personal grooming and hygiene items such as soap, toothpaste and toothbrushes, floss, towels, feminine care items, and other similar items, access to toilets, showers, and sinks, adequate temperature control and ventilation, maintenance of safe and sanitary conditions that are consistent with ORR's concern for the particular vulnerability of children, and adequate supervision to protect unaccompanied alien children from others.
- Appropriate routine medical and dental care, **family planning services**, including pregnancy tests and comprehensive information about and access to medical reproductive health services and emergency contraception, and emergency health care services, including a complete medical examination (including screenings for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the child was recently examined at another ORR care provider facility; appropriate immunizations in accordance with recommendations of the U.S. Department of Health and Human Services/U.S. Public Health Service (PHS), Centers for Disease Control and Prevention (CDC); administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
- An individualized needs assessment, which includes the various initial intake forms, collection of essential data relating to the identification and history of the child and his or her family, identification of the child's individualized needs including any specific problems which appear to require immediate intervention, an educational assessment and plan, identification of whether the child is an Indigenous language speaker, an assessment of family relationships and interaction with adults, peers and authority figures; a statement of religious preference and practice; an assessment of the child's personal goals, strengths and weaknesses; identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.
- Individual service plans must be implemented and closely coordinated through an operative case management system. Service plans should identify individualized, person-centered goals with measurable outcomes and with steps or tasks to achieve the goals, be developed with input from the unaccompanied alien child, and be reviewed and updated at regular intervals. Unaccompanied alien children ages 14 and older should be given a copy of the plan, and unaccompanied alien children under age 14 should be given a copy of the plan when appropriate for that particular child's development. Individual plans must be in that child's native or preferred language or other mode of auxiliary aid or services and/or use clear, easily understood language, using concise and concrete sentences and/or visual aids and checking for understanding where appropriate.
- Educational services appropriate to the child's level of development and communication skills in a structured classroom setting Monday-Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training. The educational program must include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program must provide children with appropriate reading materials in languages other than English for use during leisure time.
- Activities according to a recreation and leisure time plan that include daily outdoor activity, weather permitting, with at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (that should not include time spent watching television). Activities should be increased to a total of three (3) hours on days when school is not in session.
- At least one (1) individual counseling session per week conducted by certified counseling staff with the specific objective of reviewing the child's progress, establishing new short-term and long-term objectives, and addressing both the developmental and crisis-related needs of each child.
- Prior to the completion of the UAC Assessment and prior to starting counseling services, a clinician must review the Disclosure Notice with the child. See **Section 5.9.1 Requirement to Inform Children of Limits to Confidentiality** for the discussion of the Disclosure Notice in detail.

- Group counseling sessions at least twice a week. Sessions are usually informal and take place with all children present. The sessions give new children the opportunity to get acquainted with staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed, and decisions are made about recreational and other activities. The sessions allow staff and children to discuss whatever is on their minds and to resolve problems.
- Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.
- A comprehensive orientation regarding program intent, services, rules (written and verbal), expectations, and the availability of legal assistance.
- Whenever possible, access to religious services of the child's choice.
- Visitation and contact with family members (regardless of their immigration status), which is structured to encourage such visitation. The staff must respect the child's privacy while reasonably preventing the unauthorized release of the child.
- A reasonable right to privacy, which includes the right to wear his or her own clothes when available, retain a private space in the residential facility, group or foster home for the storage of personal belongings, talk privately on the phone and visit privately with guests, as permitted by the house rules and regulations, receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.
- Services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the child. Information about U.S. child labor laws and education around permissible work opportunities in a manner that is sensitive to the age, culture, and native or preferred language of each unaccompanied alien child.
- Legal services information, including the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a removal hearing before an immigration judge, the right to apply for asylum or to request voluntary departure in lieu of deportation. (This information is included in the [Legal Resource Guide for Unaccompanied Alien Children](#))

Care providers are also encouraged to draw upon any relevant [Behavioral Notes](#) or [Historical Disclosures](#) in a child's [case file](#) to determine how to might best and holistically meet each individual child's needs while in ORR care. See [Section 5.8.12 Behavioral Notes and Historical Disclosures](#).

*Revised 08/01/2024*

### 3.3.1 UAC Assessment and Case Review

Within five (5) days of an unaccompanied alien child's admission, a trained staff member conducts an assessment that covers biographic, family, legal/migration, medical, substance use, and mental health history (the UAC Assessment).

The UAC Assessment is used by the care provider as the basis for an initial release plan for the child and is the initial form used to evaluate the child for services. A child may not be transferred to another ORR care provider or released from ORR custody to a sponsor until the care provider has completed the assessment.

The care provider continues to update the child's case file using another assessment tool (the UAC Case Review). This form is used to make sure that the case is continually updated (initially on the child's 30th day in the care provider's care and subsequently every 30 days or every 90 days in a long-term foster care provider's care). This information is entered into the child's case management record in a timely fashion to identify any changes that impact a release care plan or individual service plan.

In some instances, a child may further disclose facts about their background regarding medical history or other pertinent information after this initial assessment period, many days or weeks later. In such instances, the appropriate place to document this information is

in the Historical Disclosures section of the child's case file. See [Section 5.8.12 Behavioral Notes and Historical Disclosures](#). For health-related historical disclosures, care providers will notify ORR's Division of Health for Unaccompanied Alien Children.

Posted 08/02/2023

### 3.3.2 Long Term and Concurrent Planning

Care providers create long term plans to address the individual needs of each unaccompanied alien child following release from ORR. Whenever possible, this involves releasing an unaccompanied alien child to the care of a family member.

In some cases, care providers may conduct concurrent planning for the child's future. Concurrent planning is the exploring of alternative options to the sponsorship process (including multiple sponsorship options) during the process of preparing to release children to parents, other relatives, or family friends.

In some situations, release to a family member is not an option for the child. In those instances, the care provider must explore other planning options for the future. These include:

- Release to an unrelated sponsor
- Release to a licensed program or other entity
- Preparation for **discharge** and repatriation
- Planning for teens turning 18 years of age, and "aging out" of ORR custody
- **Residential Treatment Center (RTC)** or ORR **Long-Term Foster Care (LTFC)** or transfer to another care provider within the ORR continuum of care that is most appropriate for meeting the unaccompanied alien child's immediate and longer term needs.

Posted 1/28/2015

### 3.3.3 Screening for Child Trafficking and Services for Victims

Care providers must screen all unaccompanied alien children to identify potential victims of a severe form of trafficking. The law recognizes two (2) forms of trafficking: **labor trafficking** and **sex trafficking**.<sup>2</sup> Labor trafficking of a child has three (3) elements:

- **Action:** the child was recruited, harbored, transported, provided, or obtained
- **Means:** through the use of force, fraud, or coercion
- **Purpose:** for involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking of a child has two (2) elements:

- **Action:** the child was recruited, harbored, transported, provided, obtained, patronized, or solicited
- **Purpose:** for a commercial sex act. A commercial sex act is defined as any sex act on account of which anything of value is given to or received by any person.

*Force, fraud, or coercion (means) is not a required element for sex trafficking of a child.*

The UAC assessment tool has questions designed to assist care providers in identifying victims of trafficking and children vulnerable to being trafficked. The questions in the assessment tool cover a wide range of indicators of trafficking.

Care providers must distinguish between the elements of a trafficking offense and indicators that trafficking may have occurred. A child may have experienced an indicator of trafficking, such as owing a financial debt, but may not be a victim of trafficking. A child is not a

victim of trafficking unless there is forced labor or commercial sex.

### Trafficking vs. Smuggling

Smuggling is a distinct crime from human trafficking. Smuggling involves a person being transported illegally over a national border. A child who was smuggled into the United States could have been trafficked while they were smuggled or smuggled as part of a trafficking scheme, but being smuggled does not automatically make the child a victim of trafficking.

### Actions When Care Provider Suspects Trafficking

If a care provider suspects that a child is a trafficking victim, the care provider must document this concern as a Historical Disclosure in the child's case file (see [Section 5.8.12 Behavioral Notes and Historical Disclosures](#)) and refer the child's case to the Office on Trafficking in Persons (OTIP) for further assessment. This referral is appropriate if the care provider suspects the child was a victim of trafficking at any point in the child's life and in any country. In addition, ORR must refer any trafficking concerns to the Homeland Security Investigations division (HSI) and the Human Smuggling and Trafficking Center (HSTC) at the U.S. Department of Homeland Security. Referrals to OTIP, HSI, and HSTC may include supporting documents relevant to investigative purposes. ORR may also request assistance from other federal agencies (e.g., U.S. Department of Labor) in assessing a child's case for potential trafficking concerns.

If OTIP identifies the child as a victim of a severe form of trafficking, OTIP issues the child an *Eligibility Letter*, which makes the child eligible for federally funded benefits and services to the same extent as a refugee, without regard to immigration status. Prior to issuing an *Eligibility Letter*, upon receipt of credible information that a child who is seeking assistance may have been subjected to a severe form of trafficking in persons, OTIP issues an *Interim Assistance Letter*, making the child eligible for such benefits and services for a 90-day period (which may be extended for an additional 30 days). OTIP issues *Eligibility* and *Interim Assistance Letters* to children by name, in care of the care providers. The care providers retain the original letter until release, and keep copies after release (See [Section 5.6.2](#) for care provider responsibilities relating to retention of original *Eligibility* and *Interim Assistance Letters*).

### Additional Measures

Care providers must take additional safety steps when caring for child victims of trafficking, including:

- Carefully verifying all family and sponsor relationships in order to screen for traffickers who may attempt to coerce or threaten a child;
- Adjusting the in-care safety plan as appropriate, to allow for only supervised phone calls or to revise the list of approved phone/visitation contacts for the unaccompanied alien child (See [Section 3.4 Safety Planning](#));
- Training staff and volunteers on how victims of trafficking are subject to many different methods of coercion and control, including strong bonds with an abuser and not understanding the full reality of abuse;
- Supporting unaccompanied alien children in an age-appropriate manner to identify healthy relationships and to understand common recruitment and deception tactics used by traffickers;
- Implementing additional safety measures, such as increased staff supervision or in-depth trauma-informed interviews during the planning process;
- Creating a safety plan that includes a list of safe persons, phone numbers, places to contact, and list of unsafe persons and places;
- Engaging the unaccompanied alien child in developing a plan of action for the child to take if they feel threatened or unsafe.

*Revised 08/02/2023*

### 3.3.4 Safety Planning

Care providers are responsible for safety planning for the facility as a whole and for developing in care individual safety plans for those children for whom it is appropriate.

### **Overall Safety Planning**

Care providers must develop a written safety plan that includes policies and procedures for all unaccompanied alien children in its care and program staff. The safety plan must address **emergency** situations covering the following areas: evacuations (for example due to a hurricane, fire, or other emergency), medical and mental health emergencies, disease outbreaks, and unaccompanied alien children leaving premises without permission.

Care providers and foster care programs must meet the safety requirements maintained by State and/or local licensing entities, fire code regulations, and local zoning, and building code regulations.

Care provider residential facilities (with the exception of individual foster care homes) must meet the following minimum safety and security related requirements:

- Controlled entry and exit from the premises to ensure unaccompanied alien children remain within the facility perimeter and to prevent access by the public without proper authorization.
- Video monitoring in common and living areas.
- A communications system and alarm system for all areas of the residential structure.
- Effective video monitoring of the exterior of the building and surrounding premises, including the ability to permanently download footage when necessary.
- A system for physically counting the residents and a written policy that provides that staff regulate resident movement.
- A daily log on resident population movement (for example, arrivals and departures, room assignments).
- “Mirrored windows” or small windows in the doors of any rooms used for one-on-one meetings with the children.
- A facility inspection checklist that includes the safety related components of all residential operations and program functions.
- Quarterly conducted safety assessments which document any deficiencies that could impact the safety of staff or children and **corrective action** plans for any outstanding deficiencies.
- Spot inspections in order to note safety concerns through day-to-day observations, which are tracked and incorporated into the quarterly safety assessment.

### **Individualized In-Care Safety Plans**

Care providers must create in-care safety plans for unaccompanied alien children for whom such plans are appropriate, including but not limited to those who:

- Are victims of trafficking, at high risk for trafficking, or victims of other crimes
- Have a history of criminal, juvenile justice, or gang involvement
- Have a history of behavioral issues or violence
- Have individualized needs, disabilities or medical or mental health issues
- Have a history of substance abuse
- Are parenting or pregnant
- May be subject to bullying
- Present a risk of running away

### **Safety Planning for Off-Site Outings**



Off-site outings may be used to meet minimum service requirements found in **Section 3.3 Care Provider Required Services** (e.g., recreation and leisure time services, educational services, religious services) or to supplement those services.

Prior to approving a child's participation in an off-site outing, care providers must assess the child's current behavior and level of functioning to identify potential safety risks. As part of the assessment, care providers must take into consideration individualized safety plans created for children with specific safety or behavioral concerns. In addition, care providers must ensure that all staff involved in the outing are aware of and understand any individual needs of or concerns about each child being considered for participation in the outing.

Children who are currently identified, following an individual assessment, as presenting an active safety risk or active runaway risk are not permitted to participate in off-site outings. All assessments for safety risk or run risk will be evaluated on an individual basis and in no event will a care provider use a safety plan or individualized safety plan to bar children from outings based on factors unrelated to the child's behavior or a specific safety concern.

If a child previously ran away from ORR custody, the child must be assessed in the seven (7) days following a runaway attempt or unauthorized absence. The child cannot participate in off-site outings during the seven-day (7) assessment period.

Children in ORR care and custody have significant trauma which can result in maladaptive emotional and behavioral reactions triggered by everyday life. These reactions, by themselves, do not constitute active runaway planning or a runaway attempt. For example, a child expressing extreme anger and pushing past a staff member when told to stay inside the facility because the time for outdoor activity has ended, does not, by itself, constitute a pre-meditated runaway attempt.

The seven-day (7) assessment must not rely solely on these emotions and behaviors. The seven-day (7) assessment must evaluate both the child's verbal statements of a desire to run away from the care provider in conjunction with any actions taken to facilitate running away, including, but not limited to:

- Identifying means of egress;
- Seeking information on maps and roads adjoining the facility; or
- Purchasing transit tickets.

Verbal statements, alone, do not constitute active run risk.

If a child is not permitted to participate in an off-site outing, care providers must make reasonable efforts to provide comparable and comprehensive on-site services in accordance with State licensing regulations and child welfare best practices to ensure that all minimum required services under the Flores Settlement Agreement are provided to the child (see **Section 3.3**). For children who are approved to participate in outings after the seven-day (7) assessment, care providers must explain to the children the program's expectations for appropriate behavior during the off-site outing.

Under no circumstances, may a care provider deny a child access to routine or emergency medical, dental, mental health, or other required services, listed in **Section 3.3**.

*Revised 02/27/2025*

### 3.3.5 Academic Educational Services

Care providers must conduct an educational assessment within 72-hours of an unaccompanied alien child's admission into the facility in order to determine the academic level of the child and any particular needs they may have. Care providers must provide educational services based on the individual academic development, literacy level, and linguistic ability of each unaccompanied alien child.

Each unaccompanied alien child must receive a minimum of six (6) hours of structured education, Monday through Friday, throughout the entire year in basic academic areas (Science, Social Studies, Math, Reading, Writing, Physical Education, and English as a Second



Language (ESL), if applicable). Care providers adapt or modify local educational standards to develop curricula and assessments, based on the average length of stay for unaccompanied alien children at the care provider facility, and provide remedial education and after school tutoring as needed. Learning materials must reflect cultural sensitivity. Care provider facilities must provide educational instruction and relevant materials in a format and language accessible to all unaccompanied alien children, regardless of the child's native or preferred language, including, but not limited to, providing services from an in-person, qualified interpreter, written translations of materials, and qualified remote interpretation when in-person interpretation options have been exhausted. Any academic breaks must be approved in advance by the care provider's **ORR/Project Officer (ORR/PO)**. In no event will any academic break be approved that is over two (2) weeks in duration.

Unaccompanied alien children may be separated into class groups according to their academic development, level of literacy, and linguistic ability rather than by chronological age. As needed, unaccompanied alien children must be provided an opportunity for learning advancement, such as independent study, special projects, pre-GED classes, and college preparatory tutorials, among others. Academic reports and progress notes are included and updated in the unaccompanied alien child's case file which is either sent to another care provider in the event of a transfer or release to the unaccompanied alien child upon discharge.

*Revised 02/27/2025*

### 3.3.6 Vocational Educational Services

Care providers are encouraged to create vocational training opportunities that will provide unaccompanied alien children with practical and competitive job skills and assist in the preparation for adulthood. Vocational programs may not replace academic education or be a substitute for the basic subject areas.

Care providers must document all vocational programs, including the name of the vocation or trade, staff or volunteer qualifications, frequency and duration of courses, community partnerships, course curriculum, and student capacity. If funds are generated from the sale of items made by unaccompanied alien children in the program, they must be provided to the unaccompanied alien child upon release from the facility. These funds may not be used to supplement the facility's program. If care providers plan to regularly sell items made by unaccompanied alien children, they must have written standardized procedures for the sale, accounting, and dispensing of funds to unaccompanied alien children upon release.

*Posted 1/28/2015*

### 3.3.7 Services Related to Culture, Language, and Religious Observation

Unaccompanied alien children entering ORR custody come from a wide array of cultures, practices, languages, and beliefs. Care providers must have the cultural awareness and systems in place to support the cultural identity and needs of each unaccompanied alien child.

ORR requires care providers to respect and support the cultural identity of unaccompanied alien children by:

- Allowing unaccompanied alien children regular contact with safe family members or other support systems through telephone calls, letters, and visits.
- Addressing the unaccompanied alien child by their given name.
- Including of cultural awareness in daily activities, such as food menus, choice of clothing, and hygiene routines.
- Celebration of culture-specific events and holidays.
- Academic education that covers various cultures within a classroom setting.

Care providers must make reasonable efforts to provide comprehensive services and literature in the native or preferred language of each unaccompanied alien child; provide qualified interpreter or qualified translator as needed; and allow unaccompanied alien

children to communicate in their preferred language when they choose. All required documents provided to unaccompanied alien children must be translated in the unaccompanied alien child's preferred language, either written or verbally. However, care provider facilities must not create their own translations of ORR-issued form templates or handouts.

If after taking reasonable efforts, care provider facilities are unable to obtain a qualified interpreter or qualified translator for the unaccompanied alien children's native or preferred language, depending on the children's preference, care provider facilities must consult with qualified ORR staff for guidance on how to ensure meaningful access to their programs and activities for the children, including those with limited English proficiency. Care provider facilities must prioritize the ability to provide in-person, qualified interpreters for unaccompanied alien children who need them, particularly for rare or indigenous languages. After care provider facilities take reasonable efforts to obtain in-person, qualified interpreters, then they may use qualified remote interpreter services. Care provider facilities must translate all documents and materials shared with the unaccompanied alien children, including those posted in the facilities, in the unaccompanied alien children's native or preferred language, depending on the children's preference, and in a timely manner.

Care providers must provide opportunities for unaccompanied alien children to observe and practice their spiritual or religious beliefs, including but not limited to, the celebration of religious holidays, displaying religious art, wearing religious articles of jewelry, following certain food preparation and/or dietary restrictions and attending services and activities (as long as it is safe for the unaccompanied alien child and staff). Care providers are encouraged to work with clergy or other members of the religious community to provide spiritual/religious services to unaccompanied alien children in ORR's custody. Care providers must provide access to recognized members and leaders of religious communities to ORR care provider facilities in accordance with safety policies and procedures. Upon request from an unaccompanied alien child, assuming that the request is reasonable and the safety of the unaccompanied alien child and staff is not adversely impacted, care providers must transport unaccompanied alien children to places of worship.

If an unaccompanied alien child requests religious and/or cultural information or items, such as books or clothing, the care provider must provide the applicable materials in the unaccompanied alien child's native or preferred language, depending on the child's preference, and as long as the request is reasonable.

Care provider services also help unaccompanied alien children obtain the skills necessary to acculturate to the United States and to live independently and responsibly. Acculturation services include:

- Providing English language classes
- Access to community services
- Academic education, including, for example, geography
- Celebration of U.S. holidays
- Discussion of U.S. laws
- Food and entertainment
- Field trips to local historical, scientific or cultural points of interest

*Revised 08/01/2024*

### **3.3.8 Recreation and Leisure Time Services**

Care providers must develop recreation and leisure plans that include daily outdoor activities, weather permitting, for unaccompanied alien children in their care. The plan includes at least one (1) hour per day of large muscle activity and one (1) hour per day of structured leisure time activities other than television (three (3) hours per day on when school is not in session).

Recreation and leisure time activities are separate from the required physical educational requirement.

Care providers that do not have sufficient on-site recreation areas must take unaccompanied alien children to off-site parks, community recreation centers or other suitable locations and provide a higher staff-to-child ratio in those instances.

Care providers must screen television, movies, and video games for appropriateness before being provided to unaccompanied alien children and these may not be substituted for recreational or leisure activities. (Television viewing limitations and other related policies vary from facility to facility.)

Children must have access to appropriate reading materials in languages other than English for use during the unaccompanied alien child's leisure time.

*Revised 08/01/2024*

### 3.3.9 Nutritional Services

Care providers must provide nutritional services in accordance with U.S. Department of Agriculture and U.S. Department of Health and Human Services nutritional guidelines and State licensing requirements. They also must establish procedures to accommodate dietary restrictions, food allergies, health issues, and religious or spiritual requirements.

*Posted 1/28/2015*

### 3.3.10 Calls, Visitation, Mail and Email

#### Calls

**Care providers** must ensure the privacy and safety of all children by having internal policies and procedures for calls (including landline telephone calls, cell phone calls, calls on social media apps, video calls, virtual meeting calls, etc.), such as verifying the identity of callers and the recipients of outgoing calls.

Care providers must provide children with opportunities to participate in calls with approved family members, **sponsors**, and other approved contacts living in the United States and abroad. Care providers must provide opportunities for calls that are at reasonable times for the child and the call participant (e.g., including incorporating work schedules and time zones for each call participants into call scheduling). Children may choose whether they want to participate in calls and may choose to end a call at any time.

The care provider must ensure that they make a proper attempt for children to have the call, and at minimum three (3) attempts must be made to connect the child with the call recipient. If the call does not connect, the care provider must properly document the call attempt in the call log, stating that the call was not connected after at least three (3) attempts in a 24 hour period. If the recipient calls the child back care providers must make reasonable attempts to connect the child and the approved caller.

- **Weekdays**— Care providers must provide children with daily MINIMUM 10-minute calls (ORR encourages calls to be longer than the MINIMUM requirements) or a MINIMUM of 50-minute calls allocated throughout the five (5) weekdays (Monday through Friday) as the child and the care provider determine is appropriate based on the child's unique situation, and/or child and their family's preference. ORR encourages care providers to go above the minimum whenever possible (for example, allowing 30-minute, 45-minute, or 60-minute calls every weekday). Time taken to connect calls must not be included in the minimum time allotment.
- **Weekends, Holidays, and Child's Birthdays**— Care providers must provide children with opportunities for daily MINIMUM 45-minute calls during weekends, holidays, and the child's birthday. Time taken to connect calls must not be included in the minimum time allotment.
- **Exceptional Circumstances**— If a child is experiencing a family emergency, such as grieving the loss of a loved one, or experiencing a mental health crisis, the care provider must adjust the child's call time to permit more time as necessary

(without infringing upon call time for other children at the facility or program).

Care providers must exhaust all efforts to utilize video calls over audio-only calls, where the family, sponsor and/or other approved contacts have access to video calling technology. If there are barriers to implementing a video call (due to weak signal in the location of the approved call participant, call participant's lack of access to internet, costs to the call participant etc.) reasonable attempts at getting through to the family members, sponsors, and/or other approved contacts should be made. Care providers must attempt at least three (3) times to connect a video or audio-only call.

Care providers are prohibited from taking away or threatening to take away opportunities to communicate with approved family members or sponsors as a form of punishment (see [Section 3.3.13 Behavior Management](#)).

**Attorneys of record** representing children have unlimited call access to children and the child may speak to other appropriate stakeholders, such as their consulate, the case coordinator, or child advocate. Calls with **legal service providers** (LSP), attorneys of record, case coordinators, **child advocates**, consulates, or others are not included in the minimum requirement stipulated above.

Care providers must create a list of approved and prohibited persons that a child may contact and may only prohibit calls if the care provider can document valid reasons for concern (for example, suspected smuggler or trafficker or past trauma with a particular individual). Care providers must maintain a call log in the child's case file that documents all opportunities provided to the child to participate in calls, attempts to make calls, and actual connected calls to family members, sponsors, LSPs, attorneys of record, consulates, case coordinators, child advocates, or other approved contacts.

## Visitation

Care providers must encourage visitation between children and family members, sponsors, and/or approved visitors (e.g., other close contacts of the child that are approved by the care provider), unless there is a documented reason to believe there is a safety concern, as outlined in an individualized in-care safety plan per [Section 3.3.4 Safety Planning](#) regardless of the family member, sponsors, and/or approved visitor's immigration status. Care providers must have policies in place to ensure safety and privacy of children, staff, and visitors. Care provider policies include those that ensure that the child, staff, and visitors are safe, and that the child may communicate with the visitor in private while maintaining line of sight. Care providers must have an alternative public place for visits. Prior to any visit, all visitors must be informed of visiting hours and the circumstances that could result in the termination of the visit. Visits may be terminated if a child, staff, or visitor's safety or well-being is at risk, or if the child chooses to end the visit. Visitors must provide their name, address, and relationship to the child. Family, sponsor, and/or other approved visitors may only visit with the approved child for whom they are approved to visit and not with other children in the facility. Care providers must keep a list of approved and/or prohibited visitors.

Visitation must be supervised by staff in a way that respects the child's privacy, protects the child from potential harm, and ensures the child remains safely within ORR care. The staff must respect the child's privacy while reasonably preventing the unauthorized release of the child.

Visitors are prohibited from allowing children to use their personal cell phone to make calls, access the internet, or update social media without care provider's awareness. Visitors are prohibited from recording or taking photos of the child who they are visiting during the visit, unless approved by the FFS, Project Officer, or other ORR official. If approved, to take photos of the child who they are visiting, visitors must not take photos of other children in care.

Please note that the guidelines above are for family, sponsors, and other approved visitors visits only. For the separate processes that apply to attorneys, consulates, Protection and Advocacy (P&A) organizations, Congress, media organizations, and other stakeholders, see [Sections 5.2 ORR Policies on Requests to Tour ORR Care Provider Facilities](#), [5.1.4 Requests to Visit a Facility](#), [5.4.4 Visitation](#), and [7.9 Requests to Visit Influx Care Facilities](#).

## Mail

Care providers must notify children that they have a right to send and receive mail. Care providers ensure that all mail, letters, packages, baggage, and any other items delivered to the care provider and addressed to the child are promptly delivered to the child. In addition, children must have access to postage to send letters to family, sponsors, and/or other approved contacts.

If there is reason to believe that contraband is included in a package or the mailed item presents a safety issue, the child must open the item in the presence of a care provider staff member who may conduct an inspection. If there is reason to believe it would be dangerous for the unaccompanied alien child to open an item, the care provider must call the appropriate authorities to properly handle suspicious packages. Children must not open mail in the presence of other children. Care providers must confirm the identity of the sender prior to release of mail. Care providers must keep a list of approved and/or prohibited mail recipients/senders and a mail log to track incoming and outgoing mail.

#### **Email**

Care providers must confirm the identity of the sender prior to a child accessing their email. Care providers must keep a list of approved and/or prohibited email recipients/senders and an email log to track incoming and outgoing emails. Children must also be given the opportunity to send emails to family members, sponsors, LSPs, attorneys of record, and others, if possible.

If a child has been hospitalized, this policy on calls, visitation, mail and email must be applied, to the extent possible.

*Revised 08/01/2024*

### **3.3.11 Clothing and Personal Grooming**

**Care providers** must provide new clothing and footwear, items for personal hygiene, grooming, and hair as deemed appropriate and needed.

If the unaccompanied alien child arrives at the care provider facility with appropriate clothing the child will be allowed to wear it. Care providers will not use footwear as a means to control behavior.

Care providers also ensure that unaccompanied alien children have the appropriate time, space, and items for personal grooming and hygiene. Shaving facial hair may not be required if it violates the unaccompanied alien child's cultural norms, religious beliefs, or personal preferences, and head scarves may be worn for religious reasons.

Care providers must have standardized policies and procedures regarding gang-related symbols and tattoos. While the unaccompanied alien child is in the custody of ORR, care providers must ensure that any gang-related symbols, tattoos, accessories, or paraphernalia on an unaccompanied alien child are covered or confiscated.

*Revised 4/24/2017*

### **3.3.12 Assignment of Chores**

Care providers may assign individual chores to unaccompanied alien children to teach them responsibility for their own living environment, but unaccompanied alien children may not be required to clean areas they do not occupy or use, such as administrative offices. Care providers must have written policies and procedures regarding chores, chore assignments, and schedules.

*Posted 1/28/2015*

### **3.3.13 Behavior Management**

Behavior management strategies used by the care provider must meet child welfare best practice standards. ORR approves care provider written policies and procedures for behavior management, including rules for the program to provide clear guidance to care providers for the management of behavior of children in care. Care providers must not use behavior management practices that are punitive in nature, involve punishment, involve negative reinforcement, or involve consequences or measures that are not constructive and are not logically and proportionally related to the behavior being regulated. Most importantly, ORR expects care providers to utilize trauma-informed, linguistically responsive and evidence-based child-behavior management practices that take into consideration the range of ages and maturity of children placed in the program, and that are culturally sensitive to the needs of each child. This includes, but is not limited to, creating a structured environment with routines and schedules and fostering a supportive environment that encourages cooperation, communication, problem-solving, use of de-escalation strategies, and positive behavioral management skills. Care providers must avoid using threats, which include a statement of an intention to inflict pain, injury, damage, or other hostile actions on someone in retribution for something done or not done. Threats interfere with a child's ability to feel safe and develop trusting relationships with staff and can lead to less compliance with program rules and staff requests.

Therefore, to ensure the well-being of the child, care providers are prohibited from using the following measures:

1. Sanctions that adversely affect the child's health or the physical, emotional, and/or psychological wellbeing of the child or consequences that deny or threaten to deny the child meals, hydration, sufficient sleep, routine personal grooming activities, access to a bathroom, exercise (including daily outdoor activity), medical care, religious observations and services or legal assistance.
2. Threatened or actual corporal punishment, defined as: the infliction of physical pain on any part of a child's body as a means of controlling or managing the child's behavior.
3. Threatened or actual withholding or limiting of communication with families or sponsors (including access to a child's personal cell phones or tablets in Long Term Foster Care settings) as is outlined in **Section 3.3.10 Calls, Visitation, Mail and Email**.
4. Threatened or actual use of **seclusion** by care providers other than secure care providers in **emergency safety situations** as is outlined in **Section 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations**.
5. Threats of writing a Significant Incident Report (SIR) to force a child to comply when a SIR is not warranted; and/or threat of a step-up in care provider facility type or transfer.
6. If a level or points system is being used by the program, threats to take a child's level or points away without clear reasoning or in a manner disproportionate to the behavioral issues observed. Reasoning for a child not earning a level or points, or dropping in level or losing points, must be clear to the child, and proportionate to the behavioral issues observed. The care provider must explain to the child why they did not progress in the level or points system for that particular day.
7. Threatening children with unfavorable consequences related to family/sponsor unification or legal matters (e.g., immigration, asylum, delays in reunification/discharge, loss of placement or shelter).
8. Forced chores or work that serves no purpose except to demean or humiliate the child.
9. Forced physical movement, such as push-ups and running, or uncomfortable physical positions, as a form of punishment or humiliation.
10. Conducting a search of a child's personal belongings for the purpose of behavior management.
11. All restraints, except as outlined in **Section 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations** and **Section 3.3.17 Planned Use of Restraints for Transporting Children To and From Secure Care Providers (that are not RTCs)**. This does not prohibit the use of holds to calm or comfort a child, which a child may request to stop at any time, as outlined in **Section 4.2.2 Care Provider Requirements**. **The following types of restraints are prohibited in all scenarios and in all care provider settings:**
  1. **Prone physical restraints;**
  2. **Chemical restraints;** and
  3. **Peer restraints**
12. Medication interventions that are not prescribed by a physician for a medical diagnosis.

Additional general requirements and expectations of care providers include:

1. Care provider staff must not engage in, or otherwise permit, harassment, bullying, threats, ridicule, insults, or discriminatory/prejudicial treatment, especially on the basis of a child's actual or perceived race, national origin, ethnicity, immigration status, religion, sex, sexual orientation, disability, or any other characteristic. More details on expectations for staff members' treatment of children can be found in **Section 4.3.5 Staff Code of Conduct**.
2. Care providers must not attempt to change or discourage a child's actual or perceived sexual orientation, identity, or expression as outlined in **Section 3.5 Guiding Principles for the Care of LGBTQI+ Unaccompanied Alien Children**.
3. Involving law enforcement should be a last resort applied when all other de-escalation measures have been exhausted and the child still poses a threat of harm to self or others that cannot be addressed by appropriate program staff.

Revised 02/27/2025

### 3.3.14 Transportation Services

When ORR plans to release an **unaccompanied alien child** from its care to a sponsor, ORR must assist without undue delay in making transportation arrangements. In its discretion, ORR may require the care provider facility to transport an unaccompanied alien child. In these circumstances, ORR may, in its discretion, either reimburse the care provider facility or directly pay for the child and/or sponsor's transportation, as appropriate, to facilitate timely release.

Care providers are required to provide the following additional transportation services:<sup>3</sup>

- Individual transfers from one ORR care provider to another
- Group transfers due to an emergency situation or an **influx**
- ORR requests for special initial placements
- Local services and appointments, such as medical and dental appointments, immigration court hearings, or community services as part of the individual service plan
- Release of unaccompanied alien children to sponsors who are not able to pick up the unaccompanied alien child, as approved by ORR

ORR must ensure unaccompanied alien children have access to medical care, including transportation across State lines and associated ancillary services if necessary to access appropriate medical services, including access to medical specialists, family planning services, and **medical services requiring heightened ORR involvement**. This applies regardless of whether Federal appropriations law prevents ORR from paying for the medical care itself.

The care provider must comply with all State and local licensing requirements and State and Federal regulations, such as meeting or exceeding the minimum staff/child ratio required by the care provider facility's licensing agency, maintaining and inspecting all vehicles used for transportation, etc.

Unaccompanied alien children must be transported in a manner that is appropriate to the child's physical and mental needs, including the proper use of car seats for young children.

The care provider facility or contractor must conduct all necessary background checks for individuals transporting unaccompanied alien children. To the greatest extent possible under the circumstances, when transporting unaccompanied alien children care providers will assign transport staff of the same sex as the child.

**NOTE:** **Sexual abuse** and **sexual harassment** related issues are addressed in separate policies implementing the interim final rule on standards to prevent, detect, and respond to sexual abuse and sexual harassment. See **Section 4: Preventing, Detecting, and Responding to Sexual Abuse and Harassment**.



### 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations

#### Summary

Restraints must only be used in limited situations in which an unaccompanied alien child is in an emergency safety situation, and as consistent with the use of restraints according to state laws or licensing standards. Types of restraints allowed are listed by care providers type below.

Seclusion is only allowed at a secure care provider that is not a residential treatment center (RTC), as is detailed below.<sup>4</sup> Restraints or seclusion must be used only as a last resort in emergency safety situations and must be terminated as soon as the physical safety of the child and others can be ensured. Care providers must debrief the use of restraints or seclusion with the child and staff member after its use, and follow ORR's reporting requirements as is specified in [Section 5.8.2 Significant Incidents](#).

#### Restraints Which May Be Used in All Types of Care Provider Facilities

**Personal restraints** are permitted according to applicable state and federal laws and licensure requirements but only in emergency safety situations.

Staff are permitted to physically console, hold, or hug a child with the child's verbal permission as is outlined in [Section 4.2.2 Care Provider Requirements](#). These actions are not considered restraints and do not need to be reported to ORR as SIRs.

Seclusion and mechanical restraints are prohibited in all care provider facilities except secure care provider facilities (that are not an RTC).

#### Restraints and Seclusion Allowed Only in Secure Care Provider Facilities (that are not RTCs)

In addition to personal restraints permitted in care provider facilities as described above, **mechanical restraints** may also be permitted in a *secure* care provider setting (that is not a residential treatment center (RTC)), in accordance with applicable state, federal laws, and licensure requirements; and, in an emergency safety situation.

Seclusion may only be used in a secure care provider facility (that is not an RTC) in accordance to applicable state, federal laws, and licensure requirements; and, in an emergency safety situation. All instances of seclusion must be supervised and for the short time-limited purpose of ameliorating the underlying emergency risk that poses a serious and immediate danger to the safety of others.

#### Use of Restraints and Seclusion as a Last Resort During an Emergency Safety Situation

Restraints or seclusion may only be used to ensure the immediate physical safety of the child and others during an **emergency safety situation**. Restraints or seclusion may never be used as a means of coercion, discipline, convenience or retaliation by staff.

Restraints or seclusion must only be used as a last resort and used only when de-escalation techniques and less restrictive interventions prove ineffective in ensuring the immediate physical safety of the child and others. Only staff with appropriate training on the use of restraints and seclusion should use such methods to manage the child's behavior and only in during an emergency safety situation. Restraints and seclusion may only be used in a manner that is safe, proportionate, and appropriate to the severity of the behavior and the child's chronological and developmental age, size, sex, personal history and physical, medical, and psychiatric condition.

The use of restraints or seclusion must terminate when the emergency safety situation has ended and the physical safety of the child and others can be ensured. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the child and others from immediate physical harm. Staff must review behavioral and medical conditions of the child on an ongoing basis during the emergency safety situation to justify the need for ongoing restraint and determine whether the



restraint may be made less restrictive. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the child and others from immediate physical harm.

All facilities must have restraint and seclusion policies that align with the UAC Policy Guide and all applicable state and federal laws and licensure requirements. As is specified in **Section 3.3.13 Behavior Management**, care provider facilities must provide their restraint and seclusion policies to ORR in the behavioral management plan for approval.

Only staff trained and certified in the use of restraints, seclusions, and de-escalation techniques may implement restraints or seclusion. Care providers must maintain a record of staff who have been trained and certified for reference in case use of restraint or seclusion is required in an emergency safety situation.

### **Post Intervention**

Staff must provide the child with an opportunity to discuss the emergency safety situation as soon as possible after the event has been de-escalated or as soon as the child is ready to discuss the event, and no more than 24 hours after the child's release from the emergency restraint or seclusion. The discussion must be held in the child's native or preferred language. The discussion must be held in private as soon as possible and should include the staff<sup>5</sup> involved and a clinician trained in the use of restraints and seclusion. The child may request that the staff involved in administering the restraint be excluded from the discussion if they are uncomfortable with it. Additionally, the supervisor(s) of the staff involved in the emergency safety situation must review the event, as soon as possible and within 72 hours of the event, and identify additional de-escalation strategies that could have been employed to avoid or minimize the use of restraints or seclusion.

### **Reporting the Use of Restraints or Seclusion**

Staff must report the use of restraints or seclusion during an emergency safety situation within 24 hours in a Significant Incident Report following **Section 5.8.2 Significant Incidents**, as well as any reporting requirements required by state law or licensing and federal laws. The report must include a description of the circumstances that required the use of restraint or seclusion and a description of the restraint used, including the length of use, type of restraint used, and justification for use of restraint or seclusion. Additionally, the report must document the interventions used by staff, including all de-escalation techniques employed prior to the use of restraints or seclusion. Care providers must also file an addendum to the SIR following **Section 5.8.4 Report Addendums**, which must confirm the care provider discussed the restraint with the child, indicate the child's response and provide any other relevant information.

### **Restraints and Seclusion Prevention Strategies**

Restraints and seclusion are often preventable, and can be very traumatizing practices for children and staff that can impede the therapeutic alliance and create a culture of distrust and violence. For children who have experienced traumatic events, the use of restraints and seclusion often replicates the experience of abuse and poses a barrier to healing and recovery. Therefore, every effort should be made to prevent the need for use of restraints and seclusion.

Effective strategies include the following:

- **Workforce training:** Workforce training on trauma and its impact on the developing brain and behavior can help staff understand and address the underlying cause or reason for unsafe behavior, recognize the signs of trauma before immediate safety concerns arise, and provide non-aversive interventions, such as sensory regulation, positive behavioral interventions and supports, crisis prevention, and culturally responsive de-escalation techniques to prevent the need for use of restraints or seclusion.
- **Organizational leadership support:** There are a number of steps that organizations can take to support a prevention-first approach to the use of restraints and seclusion. These include incorporating an understanding of the prevalence and impact of trauma, as well as the complex paths to healing and recovery into all aspects of service delivery; reviewing agency policies, procedures and practices to ensure that the organizational culture emphasizes non-coercive, trauma-

informed approaches promoting safety and respect; using data to inform practice; and incorporating prevention tools, such as crisis plans, comfort rooms, and sensory tools.

- Use of sensory or quiet rooms: Facilities can set up a sensory or quiet room specifically designed to have a calming effect to improve focus and reduce anxiety, which can help a child de-escalate, and allow the child with the option to leave at any time. Sensory and quiet rooms have been found to help children regulate their bodies and emotions in times of extreme stress.

Revised 02/27/2025

### 3.3.16 Notification and Reporting of the Death of an Unaccompanied Alien Child

#### **Summary**

To appropriately respond to the death of an unaccompanied alien child in the care and custody of ORR, ORR and its care providers must report the death to appropriate Federal, State, and local authorities. ORR must also notify the child's parent, legal guardian, or next-of-kin; attorney; Congressional committees identified below, and consulate officials of the death.

If an investigation is conducted, both ORR and care providers must follow-up with all investigations in order to remain informed of the progress and results of any investigation. Once ORR receives the results of any investigation, ORR will inform the unaccompanied alien child's parents, legal guardian, or next-of-kin of the results in a timely manner.

#### **Reporting to Local Authorities and ORR**

##### **Q1: To whom must the care provider immediately report an unaccompanied alien child's death?**

A1: The care provider must immediately report the death to:

1. Local law enforcement, as appropriate;
2. The care provider's State or local licensing authority;
3. Child Protective Services, as applicable; and
4. ORR via a Significant Incident Report.

#### **Notification and Reporting within the US Department of Health and Human Services (HHS)**

##### **Q2: Who must ORR immediately notify after receiving a report of an unaccompanied alien child's death?**

A2: ORR must immediately notify the appropriate staff in ORR, Office of the Administration for Children & Families (ACF) and U.S. Department of Health and Human Services (HHS).

#### **Notifications to External Parties**

##### **Q3: Who must ORR notify within 24 hours of an unaccompanied alien child's death?**

A3: ORR must notify:

1. The unaccompanied alien child's parent, legal guardian, or next-of-kin;
2. The unaccompanied alien child's attorney of record or the care provider's local legal service provider;
3. The applicable Embassy;
4. The applicable consulate;
5. The child advocate, if applicable;
6. Congressional officials — (including majority and minority staff of the Senate and House Committees on the Judiciary, the Senate Committee on Health, Education, Labor and Pensions, the House Committee on Energy and Commerce, and the Senate and House Committees on Appropriations);

7. The local U.S. Immigrations and Customs Enforcement (ICE), Field Office Juvenile Coordinator (FOJC)
8. The U.S. Department of Homeland Security, ICE, Enforcement and Removal Operations, Juvenile and Family Residential Management Unit (ERO/JFRMU); and,
9. The U.S. Department of Health and Human Services, Office of the Inspector General (HHS/OIG).

#### **Method of Notification**

##### **Q4: How must care providers and ORR make notifications?**

A4: Care providers and ORR must make all notifications to the family telephonically, and to others telephonically or by email as appropriate, and follow-up within 24 hours with a written notification that includes documentation of the initial notification. Notifications must be provided in a language the recipient can understand. ORR must utilize translation services as appropriate when making notifications to individuals who may not understand or read English. All reports, notifications, and acknowledgements of receipt (if possible) must be documented and maintained in the unaccompanied alien child's case file.

#### **Notifications to Congress**

Upon certification by medical doctor of an unaccompanied alien child's death from an ORR care provider, ORR notifies Congressional committees' points of contact by email within 24 hours of the reported death.

#### **Ongoing Reporting and Follow-Up**

##### **Q5: Are there ongoing reporting requirements?**

A5: Yes, both ORR and care providers must make reasonable efforts to remain informed of the progress and results of any investigation and post-mortem medical examination. ORR will timely inform the decedent's parents, legal guardian, or next-of-kin of the results of any investigations, examinations, and reports. ORR will provide the final investigation results, if applicable, and the original death certificate to the unaccompanied alien child's parents, legal guardian, or next-of-kin. The care provider must maintain a copy of the death certificate and any reports in the unaccompanied alien child's case file.

##### **Q6: Will ORR internally review the care provider who had physical custody of the decedent at the time of the death?**

A6: Yes, ORR will review all investigation results, the decedent's case file and records, and any other available information. ORR will determine whether ORR policies and procedures were properly followed and whether the care provider appropriately responded to any related issues that arose prior to the death and to the death itself.

*Revised 08/02/2023*

### **3.3.17 Planned Use of Restraints for Transporting Children To and From Secure Care Providers (that are not RTCs)**

ORR only allows the planned use of soft restraints<sup>6</sup> (e.g., leg or ankle weights) offsite during transportation for children to and from secure care providers (that are not an RTC) , and only when the care provider has made an individualized assessment that a child poses a serious risk of physical harm to self or others or a serious risk of escape from ORR custody. ORR also allows the use of restraints and seclusion off-site in emergency safety situations as is specified in [Section 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations](#).

All use of restraints must follow applicable state licensing requirements, state and federal laws.

Any situation involving transportation to or from offsite outings with a child to or from a secure care facility (that is not an RTC) must be provided by appropriately trained care provider staff or an agency experienced in secure transportation of children. Staff responsible for transporting children must be trained on de-escalation strategies and resolving conflict without the use of restraints, the safe and effective use of approved soft restraints, and the emergency use of safe and approved personal or mechanical restraints

### Section 3.3.15 Use of Restraints or Seclusion in Emergency Safety

#### Situations.

Whenever soft restraints are used, their use must take into account the child's age, size, sex, personal history and physical, medical, and psychiatric conditions. If the care provider or transport agency believes the child cannot be transported safely in soft restraints to a non-emergency appointment or hearing due to the existing serious risk of violence or escape, the FFS and the secure care provider must work with the legal service provider (LSP) or attorney of record and any other appropriate parties to schedule a new appointment or hearing for the child at a later date. In the event of a medical emergency, the care provider must safely and appropriately transport the child to the emergency room for evaluation using soft restraints or must contact 9-1-1 for crisis response and transportation to the nearest emergency room.

Care providers and contractors that provide secure transport must submit the program's internal written policies and procedures concerning secure transportation services and use of soft restraints in offsite outings to ORR for approval.

If using restraints during transport, care providers must document all instances of the use of restraints in transportation logs. Use of soft restraints must be reported as Significant Incident Reports, as outlined in **Section 5.8.2 Significant Incidents**. The Significant Incident Report must include details of why the soft restraints were needed. Staff must provide the child with an opportunity to discuss the use of restraints as soon as possible with a trained clinician and staff involved as is appropriate / possible. If the staff is employed by a transportation agency, a trained clinician should discuss the event with the child instead.

Secure care providers must include policies regarding the use of restraints during transportation of unaccompanied alien children and during offsite outings in their behavior management plan, which must be approved by ORR before being implemented.

*Revised 02/27/2025*

### 3.3.18 Restraints in Immigration Court and Asylum Interviews

A care provider may restrain an unaccompanied alien child while at an immigration court or asylum interview if the child exhibits imminent runaway behavior, makes violent threats, demonstrates violent behavior, or if the secure facility has made an individualized determination that the child poses a serious risk of violence or running away if the child is unrestrained in court or the interview. If a secure care provider (that is not a Residential Treatment Center (RTC)) believes a child poses a serious risk of violence during a future court appearance or interview, the care provider and the FFS should contact their attorney or legal service provider as soon as possible to discuss alternatives to transporting the child that day, including asking for a later court date and/or requesting video/conferencing. If a care provider has considered all possible alternatives and none are suitable and the care provider believes using restraints is necessary in order for the child to appear in court without a serious risk of violence, the care provider must receive FFS Supervisor for approval before applying the restraint. If there is not an agreement between the care provider and the attorney of record or LSP, the request will be escalated to the FFS Supervisor for a final decision.

*Posted 07/08/2024*

### 3.3.19 Accommodations for Saravia Hearings

Eligible unaccompanied alien children who have a scheduled *Saravia* hearing have the option of attending their *Saravia* hearing in the jurisdiction where they were apprehended, the jurisdiction or their residence (before arrest), or at an immigration court close to their current ORR placement and can attend any preliminary hearings via video teleconference (VTC). However, they must attend the final *Saravia* hearing in person. Note that ORR is responsible for providing access to VTC technology.

If the unaccompanied alien child opts to transfer their *Saravia* hearing to an immigration court close to their current ORR placement, the care provider program should notify the assigned ORR/Federal Field Specialist (ORR/FFS) and the child's attorney within 24 hours

of said decision. Prompt notification is required as any Change of Venue form must be filed within five (5) days of receiving notice of the upcoming *Saravia* hearing.

In addition, ORR must provide all transportation accommodations for *Saravia* hearings in accordance with its transportation policies and procedures (See [Section 3.3.14 Transportation Services](#)).

*Posted 02/12/2021*

## 3.4 Health Care Services

ORR facilitates and funds health care for all unaccompanied alien children in its custody. ORR has developed its medical services policies with the goals of ensuring the children's physical and mental well-being and the safety of care providers, medical personnel, and communities.

Each care provider program that accepts placement of children in ORR custody must have an established network of healthcare providers, including specialists, emergency care services, mental health practitioners, and dental providers available to provide healthcare services to admitted children.

Through its care providers and other health care professionals, ORR provides the following health care services, which must be available before children may be placed at the care provider:

- Routine medical and dental care;
- Family planning services, including pregnancy tests and comprehensive information about and access to medical reproductive health services and emergency contraception;
- Emergency health services;
- A complete medical examination (including screening for infectious diseases) within 48 hours of admission (excluding weekends and holidays and unless the child was recently examined at another facility);
- Immunizations;
- Administration of prescribed medications and special diets; and
- Appropriate mental health interventions.

Care providers must deliver services in a standardized manner that is sensitive to the age, culture, native language, and needs of each child. Care providers also must meet state and local licensing and public health requirements.

Serious medical services, including significant surgical or medical procedures, abortions, and medical services that may threaten the life of a child, require heightened ORR involvement and limited decision-making by ORR-funded care providers (see [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) (PDF)).

*Posted Date 1/8/2024; Effective Date 1/15/2024*

### 3.4.1 Healthcare Eligibility and General Standards

Healthcare eligibility is effective on the first day that an unaccompanied alien child has been placed in the physical custody of ORR. Eligibility for ORR coverage ends on the day the child leaves ORR's custody.

Care providers create collaborative partnerships with healthcare professionals and organizations to ensure children have access to healthcare. To ensure quality care, ORR requires care providers to partner with licensed medical practitioners (including physicians, physician assistants, and nurse practitioners) acting within their scope of practice to provide or supervise all medical evaluations and management. In addition, mental health services must be delivered by either a licensed mental healthcare provider or a non-licensed

mental healthcare provider under the supervision of a licensed provider. Any hospital or dental care provider providing services to children must be accredited by the Joint Commission or other nationally recognized accrediting body.

### ***Access to Interpreters During Healthcare Visits***

Care providers must ensure that unaccompanied alien children are able to communicate with physicians, clinicians, and other healthcare staff in their preferred language during all medical and mental health examinations, treatment sessions, and other health encounters. To strengthen comprehension and age-appropriate communication, care providers must prioritize services from in-person, qualified interpreters before using qualified remote interpretation services.

Options for appropriate language access during healthcare visits, **in order of** preference, include:

1. An in-person bilingual/multilingual physician or advanced practice provider (APP) at a community-based or onsite care provider medical clinic who can speak directly to the child in their preferred language;
2. An in-person **Certified Medical Interpreter** (a qualified interpreter who holds a certificate in medical interpretation) **OR** an in-person bilingual/multilingual registered nurse (RN) or licensed vocational/practical nurse (LVN/LPN) employed at the healthcare provider's clinic who can speak directly to the child in their preferred language;
3. A qualified in-person interpreter;
4. Care provider staff who serve in the clinical role of RN or LVN/LPN in their current job position and are fluent in the child's preferred language;
5. A remote Certified Medical Interpreter;
6. Qualified remote interpretation services (e.g., by telephone or video, as appropriate).

Only care provider staff who serve in the clinical role of RN or LVN/LPN in their current job position at the care provider program can serve as interpreters during healthcare visits; no other care provider staff may perform this function. In addition, neither online translation services (e.g., Google Translate) nor the child's relatives or friends can be used for interpretation services during healthcare visits.

### ***Access to Medical Chaperones at Healthcare Visits***

A **medical chaperone** is a member of the healthcare team who has been trained to act as a witness for both the patient and the healthcare professional during a **physical exam**. To ensure the safety and well-being of children, ORR requires a medical chaperone to be present for all **sensitive physical exams** (including the initial medical exam, if applicable) unless the child is 14 years or older and declines their presence. This requirement applies regardless of the sex of the child or healthcare provider performing the examination. The presence of a medical chaperone must be documented in the child's health record. Healthcare providers are also subject to their own states' laws and licensing requirements governing the use of medical chaperones.

Care providers must inform the child that a medical chaperone will be present during sensitive physical exams and explain their role. In addition, ORR recommends the presence of a medical chaperone during the non-sensitive components of a physical exam, as staffing allows. Care providers must inform the child of their right to have a medical chaperone present for non-sensitive components of the physical exam upon request.

### ***Responsibilities and Contingencies Regarding Medical Chaperones***

It is the healthcare provider's responsibility to ensure the presence of a medical chaperone. Any healthcare professional (e.g., nurse, medical assistant) employed by the healthcare provider or clinic who has been trained to act as a medical chaperone can serve in this role. Whenever possible, the medical chaperone should be the same sex as the child, or the sex that the child requests.

When initiating a partnership with a healthcare provider outside of the care provider program, the care provider must inform the healthcare provider of this requirement and confirm that the healthcare provider can consistently ensure the presence of a medical

chaperone for all sensitive physical exams.

If the community healthcare provider cannot ensure the presence of a medical chaperone and the care provider has a staff member who serves in the clinical role of RN or LVN/LPN in their current job position, that staff member can serve in the role of medical chaperone during the sensitive physical exam, only if the child is comfortable with the care provider staff member being present.

An employee of the healthcare provider or care provider who is currently serving in the clinical role of RN or LVN/LPN and designated as the interpreter during a physical exam may also serve as the medical chaperone for the exam if they have completed required medical chaperone training and no other option is available.

A child may decline the presence of a medical chaperone at any time, either before or during any portion of the exam. If a child declines the presence of a medical chaperone, a good faith attempt should be made to counsel the child about the role and importance of the medical chaperone. If the child continues to decline, is 14 years or older, and has no diagnosed cognitive or intellectual disability, their decision must be respected.

If the healthcare provider refuses to proceed without the presence of a medical chaperone, the sensitive physical exam may be deferred to another time or different healthcare provider. Any decision by a child to decline a medical chaperone, or refusal by a healthcare provider to conduct a sensitive physical exam without a medical chaperone present, must be documented in the child's health record.

#### ***Presence of Care Provider Staff During Healthcare Visits***

Children have the right to have confidential time with their healthcare provider. Healthcare visits do not require care provider line-of-sight or sound supervision. Non-medical care provider staff may only be present during the child's visit with a healthcare provider in the following circumstances:

- A child is tender age (12 years or younger);
- A child has individualized needs that require assistance, such as a disability or other medical or behavioral/mental health conditions; and/or
- A child specifically requests the presence of care provider staff.

Care provider staff are responsible for communicating relevant medical history to the healthcare provider, while also ensuring the child has an opportunity to speak with their healthcare provider privately, if they wish. This does not conflict with the medical chaperone requirement during sensitive physical exams.

*Revised 02/27/2025*

### **3.4.2 Initial Medical and Dental Examinations and Follow-up Care**

Each unaccompanied alien child must receive a comprehensive initial medical examination (IME) within two (2) business days of admission into ORR care. Children admitted with urgent medical needs or pre-existing medical conditions must be evaluated as soon as possible as is specified in **Section 3.4.3 Requests for Healthcare Services, including Medical Services Requiring Heightened ORR Involvement**.

The purpose of the IME is to assess general health, administer immunizations in keeping with U.S. standards, identify health conditions that require further attention, and detect contagious diseases, such as influenza or tuberculosis. Care providers must ensure that healthcare professionals are following ORR's latest guidance and reporting their findings on ORR forms. Payment for the IME is pre-approved by ORR.



Children who transfer between ORR care provider programs do not need to receive a new IME, however state licensing may require a new “baseline” medical examination.

Children must receive follow-up care for identified conditions as recommended by the healthcare provider. Services should be requested following the process laid out in **Section 3.4.3**. Children must receive follow-up vaccinations in accordance with the Advisory Committee on Immunization Practices (ACIP) Catch-up schedule. Additionally, children in care for more than a year must receive an annual physical examination, which must include hearing and vision screening, and follow-up care for acute and chronic conditions.

Children must receive an initial dental examination (IDE) between 60 and 90 days after admission into ORR care, or sooner if directed by state licensing.

Children with an urgent dental issue (acute tooth pain, procedure(s) needed to maintain basic function, i.e., severe and/or acute infection or a severe and/or acute infection is imminent), should receive care as soon as possible and should not wait for the IDE. Children who are given a dental treatment plan for any identified issue should receive treatment as recommended by the dental provider. Children who remain in care must receive preventative follow-up dental examinations after the IDE as recommended by the dental provider (or not less than every six (6) months).

*Revised 08/01/2024*

### **3.4.3 Requests for Healthcare Services, including Medical Services Requiring Heightened ORR Involvement**

Care providers have a responsibility to initiate healthcare services when they observe unaccompanied alien children in need of medical attention. Established policies and procedures should foster an atmosphere that encourages children to request healthcare services as needed. Children must be able to make written and/or verbal requests for emergency and non-emergency healthcare. The care provider must also have a process for children with language and literacy barriers to communicate their healthcare needs. Care provider staff must clearly explain the process for requesting healthcare services and address any questions and concerns from children regarding those processes. All requests from a child must be documented and maintained in the child’s health record. If there is a healthcare concern that is not a clear emergency, the care provider must triage the concern with a healthcare professional as soon as possible but no more than two (2) hours after the request or observation that a child is in need of healthcare services. If the child has any questions or concerns about healthcare or healthcare services they have received, the care provider must direct those questions to the healthcare provider.

Care provider facilities must notify ORR within 24 hours of an unaccompanied alien child’s need or request for **medical services requiring heightened ORR involvement** or the discovery of a pregnancy.

The care provider must follow **Policy Memorandum: Medical Services Requiring Heightened ORR Involvement** (PDF) for serious medical services and requests for abortions.

*Revised 08/01/2024*

### **3.4.4 Medication Administration and Management**

Care providers must have policies and procedures based on State or local laws and regulations to ensure the safe, discreet, and confidential provision of prescription and nonprescription medications to unaccompanied alien children, secure storage of medications, and controlled administration and disposal of all drugs.

This includes:



- Locking cabinets, closets, and refrigeration units.
- Recording all prescribed medications in the child's file.
- Training all staff or foster parents who dispense medications in the "Five Rights of Medication Administration" (right recipient, right medication, right dose, right time, and right route of administration).
- Confirming that the child has ingested the medication.
- Documenting that prescribed or over-the-counter medications have or have not been administered (by whom, and if not, for what reason, including the date, time of administration, name of medication, and dosage).
- Prohibiting one child to deliver medications to another.
- Disallowing an unaccompanied alien child's self-administration of medications, either orally or topically, outside the presence of a staff member.

A licensed health care provider (a nurse, physician, physician's assistance, nurse practitioner) must write or verbally order all nonprescription medications. Verbal orders must be documented in the child's case file.


*Revised 9/12/2015*

### 3.4.4.1 Informed Consent for Psychotropic Medication

This policy provides guidance on implementing 45 C.F.R. § 410.1310. Additionally, ORR policy and procedures related to the administration of psychotropic medication to children in ORR custody were developed pursuant to a Settlement Agreement in *Lucas R. v. Becerra*, which became effective on May 3, 2024. In accordance with the Settlement Agreement, care providers must obtain informed consent before administering psychotropic medication to any child in ORR custody. Compliance by ORR and care providers is regularly monitored through several mechanisms described below.

Psychotropic medication is prescription medication that is prescribed for the treatment of symptoms of psychosis or another mental, emotional, or behavioral disorder and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state. The term includes the following categories:

1. psychomotor stimulants;
2. antidepressants;
3. antipsychotics or neuroleptics;
4. agents for control of mania or depression;
5. antianxiety agents; and
6. sedatives, hypnotics, or other sleep-promoting medications.

Except in the case of psychiatric emergencies (as defined below), care providers shall not initiate new psychotropic medication for a child in ORR custody without obtaining informed consent prior to the administration of the medication. Psychotropic medications shall be used to treat psychiatric conditions only after completion of a diagnostic assessment by a licensed medical professional and consideration of other situational factors that may be contributing to the child's condition (e.g., trauma) and must be administered at dosages that do not exceed the dosing guidelines for the child's age and weight, where available. For more information on dosage guidelines, care providers should consult the American Academy of Child and Adolescent Psychiatry's (AACAP) [online guide on psychiatric medication](#) .

Psychotropic medication must be aligned with the child's diagnosis (*i.e.*, the medication is appropriately used on- or off-label to treat the child's specific diagnosis and not used due to other therapies being inconvenient or more expensive, recognizing that payment systems may utilize formularies), and only administered in accordance with the licensed medical professional's instructions, based upon the child's symptoms. The child must be periodically assessed by a licensed medical professional for side-effects and benefits.

ORR strictly prohibits providers from administering psychotropic medication to children as a form of punishment, for the convenience of staff members or caregivers, as a substitute for adequate staffing and/or adequate, continuous programming to meet a child's individual needs, or as a substitute for other clinical services, accommodations or supports.

### **Persons Authorized to Provide Informed Consent**

Three (3) categories of persons are authorized to provide informed consent for the administration of psychotropic medication to children in ORR custody. These persons are known as **Authorized Consenters**. The three categories of Authorized Consenters are listed below in the order of preference for obtaining informed consent.

- **Primary Consenter:** a parent or legal guardian, whether residing in the United States or in another country.
- **Sponsor Consenter:** a brother, sister, or grandparent or other close relative who has been the child's primary caregiver potential sponsor recorded in the UAC Portal as possessing a pending application that is undergoing review for sponsorship of the child.
- **UAC Consenter:** a child in ORR custody aged 16 or 17 years old from whom a licensed medical professional has obtained informed consent.

### **Centralized Concurrence Unit (CCU)**

The **Centralized Concurrence Unit (CCU)** is a panel of licensed psychiatrists). Care providers may seek concurrence from the CCU in circumstances where informed timely consent from an Authorized Consenter is not possible. The Care Provider must demonstrate its efforts to obtain informed consent from an Authorized Consenter were unsuccessful, or that neither the child nor another available person qualifies to serve as the child's Authorized Consenter.

In situations where a Primary Consenter or Sponsor Consenter denies consent, care providers can request that the CCU concur with their request for an override of the consent denial. The CCU may only concur to override denial of consent if, after consulting with the prescribing licensed medical professional and the care provider,<sup>7</sup> the CCU finds in its professional judgment that:

- Administering the prescribed medication is in the best interest of the child; and
- Failure to take the prescribed medication is likely to:
  - Either result in observable and material impairment to the growth, development, or functioning of the child or place the child at imminent risk of substantial bodily harm or of inflicting substantial bodily harm to others; and
  - All other reasonable measures alone have been determined unlikely to prevent the child from the impairment or harm described above.

The CCU must make two documented attempts to contact the Primary Consenter or Sponsor Consenter to obtain the basis for the denial of consent, if not provided by the Care Provider or prescribing clinician.

The Primary Consenter or Sponsor Consenter will be notified of the CCU's override of their denial in a language that the Primary Consenter or Sponsor Consenter understands. The Primary Consenter or Sponsor Consenter will also be provided instructions for reporting any concerns to the Court Appointed Monitor (see below for more details).

The CCU cannot override a UAC Consenter's denial of consent.

The CCU must also document and track any instance it concurs to override the Primary Consenter or Sponsor Consenter's denial of consent.

### **Obtaining Informed Consent for Providing Psychotropic Medication to Children**

Informed consent for administering psychotropic medication to children in ORR custody is a two-step process that care providers must follow. First, the care provider must obtain verbal consent from an authorized consentor within five (5) calendar days of a licensed medical professional prescribing the medication. Second, the care provider must obtain written consent from an authorized consentor within 25 calendar days of a licensed medical professional prescribing the medication.

The care provider must obtain verbal consent before commencing any new course of psychotropic medication to a child in ORR custody, at which time they will receive up to a 30-day supply of the medication. Upon obtaining the written consent, the care provider will be able to receive the remaining portion of the prescription beyond a 30-day supply. Therefore, it is essential that care providers promptly obtain verbal consent within five (5) calendar days and written consent within 25 calendar days of the medication being prescribed.

For care providers admitting children who are already receiving psychotropic medication without documented informed consent, the care provider will seek verbal informed consent within five (5) days of admitting the child to their program and obtain written consent within 25 days of admitting the child to their program.

Care providers should first seek informed consent from the Primary Consentor. Although the child may have two parents or legal guardians available, informed consent is only required from one parent. A Primary Consentor is deemed unavailable to provide informed consent when at least one of the circumstances listed below applies.

- The child has no living parent or legal guardian, as documented in the case file.
- The parent or legal guardian has failed to respond after the care provider made three separate attempts to contact them over two (2) separate days. These attempts must be documented in the case file.
- The child has a parent or legal guardian residing in the United States who was contacted but has declined to sponsor the child.
- There is a documented history of abuse, abandonment, or neglect by the parent or legal guardian, and the unaccompanied child (who must be aged 14 years or older) voluntarily states in writing that they do not wish for the parent or legal guardian to act as their Primary Consentor. The fact that a child traveled unaccompanied to the United States cannot be the basis for considering that child abandoned by their parent or legal guardian.

If a Primary Consentor is not available, the care provider should seek informed consent from the Sponsor Consentor if one exists for the child. A Sponsor Consentor is deemed unavailable to provide informed consent when at least one of the circumstances listed below applies.

- The potential sponsor does not meet the criteria to serve as the Sponsor Consentor.
- The potential sponsor has failed to respond after the Care Provider made three (3) separate attempts to contact them over two separate days. These attempts must be documented in the case file.

If neither a Primary Consentor nor a Sponsor Consentor is available to provide informed consent, then the care provider should seek informed consent from the unaccompanied child, if the child is 16 or 17 years old (UAC Consentor).

If there is no Authorized Consentor (Primary Consentor, Sponsor Consentor, or UAC Consentor) available to provide informed consent, the care provider should contact the CCU as soon as possible for a decision as to whether they concur with administering the prescribed psychotropic medication to the child.

Care providers are responsible for immediately alerting ORR's Division of Health for Unaccompanied Alien Children (DHUAC) whenever a child in their care consents to the administration of any antipsychotic or three (3) or more psychotropic medications, or when the care provider is concerned about the psychotropic medication being prescribed. Care providers will relay this information via email to [ORRDHUAC@acf.hhs.gov](mailto:ORRDHUAC@acf.hhs.gov) under the subject line 'Lucas R. Psychotropic Medication Alert'.

### **Components Necessary for Informed Consent**

Care providers must convey information regarding the medication and treatment plan to the Authorized Consenter in a language that the Authorized Consenter understands and in an age- and culturally- appropriate manner. If an Authorized Consenter is unable to read, care providers must verbally review the written consent form with the Authorized Consenter in the Authorized Consenter's preferred language. The review of the written consent form may occur at the same time as the care provider is obtaining verbal consent, as the information conveyed to the Authorized Consenter is the same for obtaining both verbal and written consent. If an Authorized Consenter is unable to write or sign their name, it is acceptable for the Authorized Consenter to affix their mark to the written consent form (i.e., their fingerprint or an "X" suffices as their signature). The Authorized Consenter may transmit their signed written consent form as a picture via a communications application (e.g., WhatsApp), text message, email, or other means of electronic communication as returning the signed form timely via mail may not be possible.

The care provider must convey to the Authorized Consenter the fourteen topics listed below prior to obtaining verbal and written consent.

1. The child's diagnosis.
2. The nature of the child's specific condition to be treated.
3. Purpose of the medication.
4. Beneficial effect on the child's condition that is expected from the medication.
5. Risks and benefits of not consenting to the medication and risks and benefits of polypharmacy.
6. Description of any accompanying discomforts, possible side effects, risks associated with the medication, and the nature and possible occurrence of irreversible symptoms.
7. Whether the medication is habituating in nature.
8. Alternatives to the use of the medication that have been attempted and were unsuccessful.
9. Generally accepted alternative medications and non-pharmacological interventions, if any, as well as the risks and benefits of those alternatives.
10. Name, credentials, and contact information for the prescribing medical professionals.
11. Right of the Authorized Consenters to withhold consent and an explanation of the next steps that will be taken to address the child's condition if they do not consent (i.e., seek override from the CCU, if necessary).
12. Right of the Authorized Consenter to withdraw consent at any time, with an explanation of the next steps that will be taken (i.e., seek override from the CCU, titrate the child off the medication over time).
13. Explain that delay or denial of step-down to a less restrictive placement or release of the child will not occur to punish the child or the Authorized Consenter withholding or withdrawing consent.
14. Other information that the care provider, treating mental health professional, or treating medical professional determines is necessary for the Authorized Consenter to provide informed consent.

### **Updating and Renewing Informed Consent**

Programs will renew the verbal and written informed consents when either of the two conditions detailed below occur.

1. The type of psychotropic medication prescribed changes.
2. The dosage for the psychotropic medication increases beyond the parameters indicated in the initial informed consent as permissible as titration. Every six (6) months after the date that the Authorized Consenter provided verbal informed consent.

### **Obtaining Child's Assent or Agreement to Take Psychotropic Medication**

Separately from obtaining informed consent, care providers are required to obtain informed assent or agreement from children aged 14 years or older to take the prescribed psychotropic medication. While the child's denial of assent or refusal to take the medication does not nullify the informed consent from an Authorized Consenter or concurrence from the CCU, administering the medication requires the child's willingness to take the medication. Children who decline to provide assent will not be administered the medication,

except in the case of Emergency Administration as described below. To accomplish receiving informed assent from a child aged 14 years or older, the care provider must:

- Discuss with the child in an age and developmentally appropriate manner and in a language that the child understands:
  - The purpose of the medication and that it is part of their treatment plan;
  - The potential side effects of the medication; and
- Offer the child an opportunity to voice reactions or concerns regarding the medication.
- Show the child a written notice explaining that the child may speak privately with the prescribing licensed medical professional if the prescriber is willing to do so. This written notice should include the date that it was shown to the child and be included in the child's case file.

### **Emergency Administration of Psychotropic Medication to Children**

Administration of psychotropic medication to a child in ORR custody without prior consent is permissible in an emergency. The administration of psychotropic medication to a children in ORR custody without receiving the child's prior assent is also permissible in an emergency. An emergency exists where the immediate failure to administer psychotropic medication to the child poses an imminent threat of death or substantial bodily harm to the child or others. Except where gradual weening off a medication administered on an emergency basis is medically necessary, use of the emergency medication must terminate when the emergency has ended.

ORR's Division of Health for Unaccompanied Alien Children (DHUAC) will monitor any care provider that administers psychotropic medication for an emergency to the same child three or more times while the child is placed at their program. In addition, DHUAC will monitor any care provider that administers psychotropic medication for an emergency five (5) or more times within 30 days to any children in their program. DHUAC's monitoring efforts will be reported to the Court Appointed Monitor, who is responsible for ensuring ORR's compliance with the Settlement Agreement in *Lucas R. v. Becerra*.

In circumstances where psychotropic medication is administered to a child in ORR custody for emergency reasons, the care provider must perform the following duties.

- File an Emergency Significant Incident Report in accordance with **UAC Policy 5.8.1 Emergency Incidents**.
- Notify the Primary Consenter or Sponsor Consenter of the emergency administration of psychotropic medication as soon as practicable, but not later than one (1) week after the initial administration.
- Document in the child's case file an explanation of the nature and circumstances of each administration of an emergency medication.
- Conduct a meeting between the case manager, clinician, and the child within one (1) week of the emergency administration to discuss what should be done in the future to meet the child's needs in lieu of administration of emergency medication..

### **Monitoring Compliance Regarding Administration of Psychotropic Medication to Children in ORR Custody**

ORR policy and procedures related to the administration of psychotropic medication to children in ORR custody were developed pursuant to a court-enforced Settlement Agreement in *Lucas R. v. Becerra*, which became effective on May 3, 2024. In accordance with the Settlement Agreement, compliance by ORR and care providers will be regularly monitored by the Court-Appointed Monitor. Additionally, the attorneys who represented children in *Lucas R.* (known as Class Counsel) may periodically conduct confidential attorney-client visits with children in ORR custody who are prescribed or administered one (1) or more psychotropic medication(s) (with the children's consent) at the program where they are residing.

#### Oversight Duties of Licensed Child and Adolescent Psychiatrist(s) within ORR DHUAC

A licensed child and adolescent psychiatrist(s) within ORR's DHUAC will have oversight responsibilities that include:

- Reviewing cases flagged because a UAC Consenter consented to:
  - the administration of antipsychotics;
  - the administration of three (3) or more psychotropic medications; or
  - where care provider expresses concerns about the psychotropic medication being prescribed.
- Conducting retrospective, secondary reviews of psychotropic medication prescriptions for children in ORR custody, where the review must examine:
  - Administration of any psychotropic medication to a child aged three or younger.
  - For children aged four or older:
    - Simultaneous administration of three or more psychotropic medications for 90 days or more.
    - Administration of two or more antipsychotic medications for 60 days or more.
  - A minimum of an annual review of instances where the CCU overrides a denial of consent by a Primary Consenter or Sponsor Consenter.
  - Use of psychotropic medication dosages in excess of the parameters for a child's age and weight as noted in the "literature based maximum dosage" established by the Texas Health and Human Services Commission (HHSC) document entitled "[Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health](#)" (PDF). As the document is periodically updated, care providers should utilize the most current version available.
- Conducting an annual case review of at least 30 case files for children administered psychotropic medication to evaluate care provider compliance with the duty to exercise reasonable and diligent efforts to compile and maintain the child's medical records.
- DHUAC will track and document its oversight duties and report their efforts to the Court Appointed Monitor for inclusion in the Monitor's report to the court overseeing the Settlement Agreement.

*Posted 03/17/2025; Special note regarding the effective date of UAC Policy Section 3.4.4.1: ORR is implementing this section of the UAC Policy Guide across the care provider network over several months. The implementation will proceed in phases, according to a transition schedule that covers a 21-month period. Therefore, the effective date of UAC Policy Section 3.4.4.1 for each care provider will vary, depending on the transition deadline established for each care provider. UAC Policy Section 3.4.4.1 will become fully effective for all ORR programs by August 3, 2026. ORR's DHUAC will also be fully responsible for their oversight duties as of May 3, 2026.*

### 3.4.5 Responding to Medical Emergencies

All medical emergencies must be immediately addressed. A medical emergency is characterized by signs or symptoms that would reasonably be considered to require immediate medical attention to prevent death, loss of or significant damage to an organ or body function. Medical emergencies also include pregnancy complications.

The policy on communicating about medical emergencies involving pregnancy, birth, or abortion can be found in [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) (PDF).

*Posted 8/4/2021; Revised 08/02/2023*

### 3.4.6 Management of Communicable Diseases

From intake to release, care providers must observe all children for signs or symptoms of communicable diseases and act accordingly to protect others against possible infection.

Facilities must be aware of the list of notifiable diseases in their States. Each facility must have policies and procedures for identifying, reporting, and controlling communicable diseases that are consistent with State and local laws and regulations. Further, each facility must inform ORR about each suspected or confirmed case and follow ORR medical guidance on managing cases and contacts, which is prepared and disseminated to care providers by the ORR/Medical Services Team. ORR has protocols for diseases of public health concern that have been diagnosed in unaccompanied alien children, including varicella and tuberculosis. The care provider is responsible for training all staff about its current communicable disease plan.

Care providers must have an identified space within the shelter facility that may be used for quarantine or isolation in the event that an unaccompanied alien child must be separated from the general population for a medical reason. An unaccompanied alien child may be placed in medical isolation and excluded from contact with the general population in order to prevent the spread of an infectious disease due to a potential exposure, protect other unaccompanied alien children and care provider facility staff for a medical purpose, or as required under State, local, or other licensing rules, as long as the medically required isolation is limited only to the extent necessary to ensure the health and welfare of the unaccompanied alien child, other unaccompanied alien children at a care provider facility, and care provider facility staff, or the public at large. The space must be suitable to house a child for days or weeks.

Unaccompanied alien children must be admitted to a hospital if clinically indicated, if public health needs require it, or if isolation at the facility cannot be achieved safely and effectively. An unaccompanied alien child's refusal of treatment that puts others at risk for spread of the disease is considered a public health justification for isolation.

Facilities must provide regular updates to ORR regarding the mental and physical health of children in isolation. Standard programs and **restrictive placements** must provide all mandated services to the greatest extent practicable under the circumstances to unaccompanied alien children in medical isolation. Medically isolated unaccompanied alien children still must be supervised under State, local, or other licensing ratios, and, if multiple unaccompanied alien children are in medical isolation, they should be placed in units or housing together (as practicable, given the nature or type of medical issue giving rise to the requirement for isolation in the first instance).

*Revised 08/01/2024*

### 3.4.7 Maintaining Health Care Records and Confidentiality

Care providers are responsible for procuring and maintaining records of health care services received by unaccompanied alien children while in their care. Care providers must request records for all office visits (medical, dental, mental health), hospitalizations, radiology and lab results, and procedures.

Care providers must maintain the children's individual health files separately from the children's case files unless state licensing requirements dictate otherwise. In addition, care providers must report health information to ORR as directed and retrieve records upon ORR's request, even after a child's release. Upon a child's transfer to another ORR program, care providers must transfer with the child all medical, dental, and mental health records. Upon release from ORR custody, children are entitled to receive copies of their health records. At a minimum, all children at release must receive:

- Initial medical screening documentation;
- Immunization records; and
- Lab test results or radiograph readings.

Also upon release, children who have been hospitalized for any medical or mental health issues must receive copies of their relevant health records, including hospitalization admission note and discharge summary.<sup>8</sup>

#### *Confidentiality of Healthcare Information*



The care provider must have written policies, procedures, and practices that protect the confidentiality of medical information. To safeguard children's privacy, care providers must use discretion when communicating with an unaccompanied alien child about medical appointments in the presence of others. Care provider staff also must dispense medication in a private location. Similarly, medical disclosure to staff about a child's health condition should be determined by the Program Director on a need-to-know basis.

For confidentiality policies on issues related to pregnancy, birth, and abortion, care providers must follow the [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) (PDF) — **Notification Section**.

*Posted 8/4/2021*

### 3.4.8 Medical Clearance Prior to Release or Transfer

Unaccompanied alien children who have serious physical or mental health issues or have had exposure to a communicable disease may not be transferred or moved until they have been medically cleared by a physician or ORR is consulted. Pregnant unaccompanied alien children should be medically cleared for travel by plane if required by the air carrier (generally, after 36 weeks of pregnancy) or if they delivered within the past seven (7) days. Children with medical needs must have follow-up services or other arrangements in place prior to their discharge.

Unaccompanied alien children who need to remain on prescription medication must receive a minimum of a 30 day supply of medication, or the remainder of their medication if on a time-limited course, prior to transfer or release. The unaccompanied alien child and the accepting care provider (in the case of a transfer) or a sponsor (in the case of release) must be instructed in the proper administration of medications. Care providers may not release unaccompanied alien children with any narcotic medications. As part of release planning, if an unaccompanied alien child is on any chronic **psychotropic medications**, the care provider must address the unaccompanied alien child's situation, including likelihood of maintaining medications upon release from ORR custody, with the prescribing psychiatrist to determine if medications should be continued or if a period of weaning off the medication is required before release.

Unaccompanied alien children who are infectious with communicable diseases of public health concern, which have potential to cause outbreaks, will not be released from ORR care until they are non-infectious. However, if an infectious child must be moved internally within a facility, to another facility, or to the hospital, care providers and others having interaction with the child must follow Standard Precautions, depending on the mode of disease transmission (e.g., surgical mask should be worn by children with diseases spread by the respiratory route). The care provider must provide the medical, dental, and mental health records to the unaccompanied alien child upon release or to the accepting care provider in the event of a transfer.

*Posted 5/11/2015*

### 3.4.9 Provider Reimbursement

Each ORR-funded care provider program must have an established network of healthcare providers, including specialists, emergency care services, mental health practitioners, and dental providers that will accept ORR's fee-for-service billing system.

Payment for health services for unaccompanied alien children in ORR care is managed by a third-party entity. Healthcare providers are encouraged to enter into an agreement with the third-party entity before providing care for children. Contracting with the third-party entity in advance will facilitate the appointment scheduling and billing process. Programs should submit the names of selected healthcare providers directly to the third-party entity who will then contact the healthcare providers and work out an agreement. Facilities providing emergency or urgent services do not need to have an agreement with the third-party entity prior to administering care.



ORR does not permit or reimburse **sexual orientation and identity (SOI) change efforts**, commonly referred to as “conversion therapy,” for children in ORR custody under any circumstances. (See **Section 3.5.6 Prohibition on Sexual Orientation and Identity Change Efforts**)

ORR does not reimburse care providers and medical providers for transportation costs associated with mobile medical providers. Transportation for services, including but not limited to medical, radiology, laboratory, and dental services, are at the care provider’s expense. Care providers should take transportation fees into consideration when contracting with mobile medical providers.

Treatment authorization requests for non-emergency, scheduled office visits (primary care, specialty consultations, mental health, and dental care), laboratory tests, surgeries and procedures, physical therapy, and other specialized health treatments must be pre-approved before services are rendered. Prior authorization by ORR to cover the related costs in no way implies consent to conduct the procedure or provide the medical service when consent by a parent or legal guardian is required and cannot be obtained.

Considering the high turnover and short-term stay of most children in ORR custody, some services are not appropriate (e.g., cosmetic treatment, medical consultations for minor health concerns where safe and effective home remedies exist, specialty consultation for a stable condition that cannot be resolved before discharge and will not affect treatment or care while in custody, etc.)

*Revised 02/27/2025*

## 3.5 Guiding Principles for the Care of LGBTQI+ Unaccompanied Alien Children

All children in ORR care are entitled to human rights protections and freedom from discrimination and abuse. Care providers must ensure that children who are lesbian, gay, bisexual, queer or questioning, or intersex (**LGBTQI+**) and nonbinary children are fairly treated and served during their time in ORR custody.

ORR requires care providers to operate their programs following the guiding principles below. Care providers must ensure that LGBTQI+ children:

- are treated with dignity and respect
- receive recognition of their sexual orientation and/or identity
- are not discriminated against or harassed based on actual or perceived sexual orientation or identity
- are cared for in an inclusive and respectful environment

Care providers must:

- maintain the privacy and confidentiality of information concerning sexual orientation and identity (See **Section 5.10 Information Sharing**)
- use chosen names and pronouns in accordance with the child’s self-determined identity
- house LGBTQI+ children according to an assessment of the child’s identity and housing preference, health and safety needs, and State and local licensing standards
- offer an individualized assessment to determine whether additional or alternate restroom accommodations should be provided
- allow LGBTQI+ children to dress and express themselves according to their identity
- allow LGBTQI+ children to choose the sex of staff to conduct a pat-down search if one is necessary

More details about the protections of LGBTQI+ children can be found below and in **Section 4: Preventing, Detecting, and Responding to Sexual Abuse and Harassment**.

Revised 02/27/2025

### 3.5.1 Zero Tolerance for Discrimination and Harassment

LGBTQI+ children have the right to be free from discrimination and harassment based on actual or perceived sexual orientation or identity (SOI). More specifically, care providers may not label a child as a likely abuser or punish a child for their sexual orientation, identity, or expression. All children must be treated fairly and equally and provided with inclusive, safe, and nondiscriminatory services.

Revised 02/27/2025

### 3.5.2 Prohibition on Segregation and Isolation

Care providers must be responsive to the needs of LGBTQI+ children in an inclusive and respectful environment. Care providers may not isolate or involuntarily segregate children solely because of their sexual orientation, identity, or expression. In addition, one-on-one supervision may only be utilized in exigent circumstances.

Revised 02/27/2025

### 3.5.3 Confidentiality with Regard to Sexual Orientation and Identity

As noted above, the privacy and confidentiality of children with regard to sexual orientation and identity must be protected. Care providers must ensure that information about sexual orientation and identity is kept confidential and is only shared when disclosure is necessary for medical or mental health treatment, or the child requests the information be shared for a particular purpose. As with all information gathered during the course of service provision, care providers must implement appropriate controls on information dissemination within the care provider facility in order to ensure that sensitive information is not exploited to any child's detriment by staff or other children. (See [Section 5.10 Information Sharing](#))

Revised 02/27/2025

### 3.5.4 Housing

When making housing assignments for an intersex child, the care provider must consider the child's self-identification and the effects of a housing assignment on the child's health and safety. Care providers must not base housing assignment decisions of intersex children solely on the identity documents or physical anatomy of the child. The child's self-identification of their sex and self-assessment of safety needs must always be taken into consideration as well. The care provider's housing assignment of an intersex child must be consistent with the safety and security considerations of the care provider facility and State and local licensing standards. If State and local licensing standards conflict with the care provider's determination for a child's housing assignment, the care provider should immediately contact the ORR/Federal Field Specialist (ORR/FFS) for further guidance.

Revised 02/27/2025

### 3.5.5 Restroom and Dressing Area Accommodations

If a child expresses safety or privacy concerns or the care provider otherwise becomes aware of privacy or safety concerns related to restrooms or dressing areas, the care provider must take reasonable steps to address those concerns. This may include, for example:

the addition of a privacy curtain or partition; permission to use a nearby restroom or office; or a separate changing schedule. The care provider should contact the ORR/Federal Field Specialist (ORR/FFS) for further guidance if the care provider is uncertain about the appropriate steps to take.

*Revised 12/20/2023*

### 3.5.6 Prohibition on Sexual Orientation and Identity Change Efforts

**Sexual orientation and identity (SOI) change efforts**, commonly referred to as “conversion therapy,” or “reparative therapy,” are practices that aim to suppress or alter an individual’s sexual orientation, identity, or expression. ORR does not permit or reimburse SOI change efforts for children in ORR custody under any circumstances or allow **Post-Release Services** providers to refer children in their caseload to SOI change efforts. (See **Section 3.4.9 Provider Reimbursement** and **Section 6.2.11 Services for Children Requiring Special Consideration**)

*Revised 02/27/2025*

## 3.6 ORR Long-Term Foster Care

ORR provides long-term foster care placements for certain unaccompanied alien children who meet the requirements under **Section 1.2.6 Long-Term Foster Care** is defined as an ORR-funded and administered family placement in a community based setting. Children placed into ORR long-term foster care remain in the care and custody of ORR. ORR long-term foster care programs are not State funded and are not part of the State child welfare system. However, ORR long-term foster care families are licensed by the State to serve as foster families, and as such, adhere to standards of care as outlined by the State licensed child placement agency, State licensing regulations, and any ORR policies related to long-term foster care. Foster care providers must comply with all applicable State child welfare laws and regulations and all State and local building, fire, health, and safety codes. Foster care providers must deliver services in a manner that is sensitive to the age, culture, native language, sexual orientation and individualized needs of each child. The child attends community-based school and receives on-going case management and counseling services, as well as other services as needed.

*Posted 10/5/2015*

### 3.6.1 ORR Long-Term Foster Care Service Provision

In ORR long-term foster care placements, long-term foster care providers must offer every child the following services:

- A comprehensive program orientation
- Case management services
- Educational services in a community based school
- Weekly individual counseling sessions
- Legal services and representation , as applicable
- Individualized Safety Plans
- Services related to culture, language, and religious observation
- Recreation and Leisure Time Services
- Acculturation and Adaptation services
- Telephone Calls, Visitation, and Mail
- Opportunities for vocational education and independent Living

For information regarding transfers into ORR long-term foster care, please see section **1.2.6 Long-Term Foster Care**.

For information about monitoring of ORR long-term foster care programs please see section **5.5.3 Foster Care Monitoring**.

*Posted 10/5/2015*

### **3.6.2 Change in Placements while in ORR Long-Term Foster Care**

Foster care providers must make every effort to place and keep children in the least restrictive setting. Foster care provider facilities must provide support services and appropriate interventions, when necessary, to help keep a child in the placement. A change of placement from long-term foster care to a more restrictive setting or a more therapeutic setting may be considered after reasonable efforts have first been made to provide additional services or manage the child's behavior in order to maintain the current placement. If it is determined that a child requires transfer into a more restrictive placement, please see section **1.2 ORR Standards for Placement and Transfer Decisions**. For placements into an Residential Treatment Center (RTC) please see section **1.4.6 Residential Treatment Center and Out-of-Network Placements**.

*Posted 10/5/2015*

### **3.6.3 Additional Questions and Answers about this Topic**

#### **Q: Is release to a sponsor possible after a transfer to ORR long-term foster care?**

A: Yes. In the event that a sponsor is identified after a transfer to ORR long-term foster care has occurred, the sponsorship process must be pursued. Case managers must be continually assessing cases for potential sponsors in long-term foster care. Please refer to **Section 2: Safe and Timely Release from ORR Care** for further information.

*Posted 10/5/2015*

## **3.7 Legal Services**

All unaccompanied alien children should receive the following immigration legal-related services when in ORR legal custody:

- **Know Your Rights (KYR) presentations;**
- **Confidential legal consultations**, which are legal screenings for potential immigration legal relief from removal, as well as human trafficking concerns.

Additionally, unaccompanied alien children may also receive direct legal representation in seeking immigration legal relief and/or protection from removal.

In-person meetings are preferred during the course of providing legal counsel to any unaccompanied alien child, though telephonic or teleconference meetings between the unaccompanied alien child's attorney or U.S. Department of Justice (DOJ) Accredited Representative and the unaccompanied alien child may substitute as appropriate. Either the unaccompanied alien child's attorney, DOJ Accredited Representative, or a care provider staff member or care provider must always accompany the unaccompanied alien child to any in-person courtroom hearing or proceeding, in connection with any legal representation of an unaccompanied alien child.

An unaccompanied alien child in ORR care must be able to conduct private communications with their attorney of record, DOJ Accredited Representative, or **legal service provider** in a private enclosed area that allows for confidentiality for in-person, virtual, or telephonic meetings.

Care provider facilities must make qualified interpretation and/or translation services available to unaccompanied alien children, child advocates, and legal service providers upon request while unaccompanied alien children are being provided with those services. Such services must be available to unaccompanied alien children in enclosed, confidential areas.

*Revised 08/01/2024*

### 3.7.1 Know Your Rights Presentation & Confidential Legal Consultation for Legal Relief

Children in ORR legal custody receive a **Know Your Rights (KYR) presentation** (in-person, telephonic, or video presentation) within ten (10) business days of admission to an ORR care provider facility<sup>9</sup>, within ten (10) business days of a child's transfer to ORR facility (except ORR Long-Term Foster Care or ORR **Transitional Foster Care**), and every six (6) months for unrepresented children who remain in ORR custody, as practicable. Such presentation must be provided by an independent legal service provider (LSP) that has appropriate qualifications and experience, as determined by ORR, to provide such presentation and must include information notifying the unaccompanied alien child of their legal rights and responsibilities in the immigration system, including protections under child labor laws, and of services to which they are entitled, including educational services. The presentation must be delivered in the native or preferred language of the unaccompanied alien child and in an age-appropriate manner. The information from the presentation must also be posted for unaccompanied alien children in an age-appropriate format and translated into each child's native or preferred language, in any ORR contracted or grant-funded facility where unaccompanied alien children are in ORR care. For children released prior to receiving the KYR presentation, LSPs must follow up as soon as practicable to complete the presentation, in-person or telephonically. Among the topics covered in the presentation are information on the availability of legal assistance, the right to be represented by counsel at no expense to the government, the right to a removal hearing before an immigration judge, notification regarding the child's ability to petition for Special Immigrant Juvenile (SIJ) classification, to request that a juvenile court determine dependency or placement for the purpose of altering the child's custody status or seeking release from ORR custody, and notification of the ability to apply for asylum or other forms of relief from removal, including voluntary departure in lieu of deportation, and the risk determination hearings available in certain situations (see **Section 2.9 Risk Determination hearings for Unaccompanied Alien Children**).

In addition to the KYR presentation, all children undergo a confidential legal consultation with a qualified attorney (or paralegal working under the direction of an attorney, or DOJ Accredited Representative) to determine possible forms of relief from removal in relation to the unaccompanied alien child's immigration case, as well as other case disposition options such as, but not limited to, voluntary departure. As part of the confidential legal consultation, the legal service provider also will identify indicators of mistreatment, exploitation, or trafficking. As part of the confidential legal consultation process, LSPs notify children if they are potentially eligible for immigration legal relief. Children are screened by LSPs in a private setting at the care provider facility or in the community at a setting arranged by the LSP. Care providers are responsible for providing a private setting if the children attend the confidential legal consultation at their facility. Care providers are also responsible for providing legal service providers information in accordance with **Section 5.10.3 Information Sharing with LSPs, Attorneys of Record, and Child Advocates** in preparation for the child's confidential legal consultation.

Children in ORR custody receive a confidential legal consultation within ten (10) business days of admission to an ORR care provider facility. In the case where a child is unable to participate in person within the ten (10) business days time limit (e.g., due to medical isolation), the LSP must make every effort to ensure that the child receives confidential legal consultation as soon as possible, including performing it remotely if needed.

Such legal consultation must occur within ten (10) business days of a child's transfer to a new ORR facility (except ORR long-term foster care or ORR transitional foster care) or upon request from ORR. ORR must request an additional legal consultation on behalf of a child, if the child has been identified as:

(A) A potential victim of a severe form of trafficking; or

(B) Having been abused, abandoned, or **neglected**; or

(C) Having been the victim of a crime or domestic violence; or

(D) Persecuted or in fear of persecution due to race, religion, nationality, membership in a particular social group, or for a political opinion.

When an unaccompanied alien child requests legal counsel, ORR must ensure that the child is provided with a list and contact information for pro bono counsel, and reasonable assistance to ensure that the child is able to successfully engage an attorney at no cost to the government. ensure that the child is provided with a list and contact information for pro bono counsel, and reasonable assistance to ensure that the child is able to successfully engage an attorney at no cost to the government.

Under rare cases where an LSP requests additional information for legal consultation beyond those specified as files to be automatically provided in **Section 5.10.3**, the LSP should also follow the case file request process outlined in **Section 5.10.1 UAC Case File Request Process**.

*Revised 08/01/2024*

### 3.7.2 Direct Legal Representation

ORR funds legal service providers (LSPs) to provide direct immigration legal representation or representation in non-immigration related matters to the extent of available appropriations, and insofar as it is not practicable for ORR to secure pro bono counsel. ORR prioritizes direct representation for the following classes of children:

- Upon their placement in a Long-Term Foster Care (LTFC) facility or in a residential treatment center (RTC) outside a licensed ORR facility and for whom other legal assistance does not satisfy the legal needs of the individual child. LSPs must coordinate with ORR staff and care provider staff to timely identify such children;
- With no identified sponsor who are unable to be placed in LTFC facilities. LSPs must coordinate with ORR staff and care provider staff to timely identify such children;
- In ORR custody who must appear before EOIR, including children seeking voluntary departure, and for whom other available assistance does not satisfy the legal needs of the individual child. LSPs must coordinate with ORR staff and care provider staff to timely identify such children;
- In ORR custody who must appear before ORR appellate procedures, including **Placement Review Panel (PRP)** and risk determination hearings;
- In need of judicial bypass or similar legal processes as necessary to enable an unaccompanied alien child, per their request, to access certain lawful medical procedures that require the consent of the parent or legal guardian under State law, and when the unaccompanied alien child is unable or unwilling to obtain such consent;
- In state juvenile court proceedings, when the unaccompanied alien child already possesses Special Immigrant Juvenile classification;
- Enrolled in ORR **Unaccompanied Refugee Minor (URM) program**, provided they have not yet obtained immigration relief (including related petitions) or reached 18 years of age at the time of retention of an attorney;
- Released to a sponsor residing in the defined service area of the same LSP who provided the child legal services in ORR custody, to promote continuity of legal services and advance ORR's goal of universal representation;
- In need of obtaining an employment authorization document; and
- Other categories of unaccompanied alien children, up to funded capacity.

Attorneys of record who are funded by ORR are not, solely by reason of such funding, prohibited from representing the child in ORR custody with respect to any other matter. This includes but is not limited to: step-up to a more restrictive placement, release from ORR

custody, and with respect to administration of psychotropic medications; however, ORR need not fund such representation.

Attorneys of record for the child in ORR legal custody notify ORR of their role by submitting a completed *Notice of Attorney Representation form* to the ORR care providers. This includes, but is not limited to, Legal Service Providers funded by ORR who are representing a child in an immigration proceeding, in a risk determination hearing, or in other individual matters, as specified in the Notice of Attorney Representation form, who have entered into formal representation for an unaccompanied alien child. Care providers will upload the form into the ORR case management database within five (5) days of receiving the completed form and include a copy of the form in the unaccompanied alien child's case file. The *Notice of Attorney Representation form* details the purpose of legal representation and the representation timeframe. Attorneys of record who are representing an individual child and who are identified on the *Notice of Attorney Representation form* are eligible to receive updates on their client's case, as relevant to the purpose of the representation, and to request a copy of their client's case file from ORR, in accordance with **Section 5.10.1 UAC Case File Request Process**.

Revised 08/01/2024

### 3.7.3 Attorney Request for Information on UAC Case

#### *Information Sharing Between Care Providers & Legal Service Providers*

In accordance with **Section 2.3.2 Case Managers** and **Section 5.10.3 Information Sharing with LSPs, Attorneys of Record, and Child Advocates**, care provider staff may provide legal service providers (LSPs) information about a child's case to assist in the legal relief sought by the child. Care provider staff must also provide the child's attorney of record a copy of the **Notice of Placement in Restrictive Setting** for children placed in heightened supervision, secure, and Residential Treatment Centers in accordance with **Section 1.4.2 30-Day Restrictive Placement Case Review**.

According to **Section 4.10.4 Notification and Access to Attorneys/Legal Representatives, Families, Child Advocates and Sponsors** and **Section 5.8.11 Notification to Attorneys, Legal Representatives, Child Advocates, Families, and Sponsors**, some information about children may remain confidential and require express permission from the child to share. In such cases, care providers may confer with the unaccompanied alien child to ascertain whether the confidential information may be released to the LSP.

#### *Requests for Copies of Documents in the UAC Case File*

An attorney of record individually representing<sup>10</sup> an unaccompanied alien child may request a copy of the child's case file or documents in the child's case file in accordance with **Section 5.10.1 UAC Case File Request Process** and **Section 5.10.3**. Upon receipt by ORR of proof of representation and authorization for release of records signed by the unaccompanied alien child or other authorized representative, ORR must share, upon request and within a reasonable timeframe to be established by ORR, the unaccompanied alien child's complete case file, apart from any legally required redactions, to assist in the legal representation of the unaccompanied alien child. In addition to sharing the complete case file, upon request by an attorney of record or DOJ Accredited Representative, ORR must promptly provide the attorney of record or DOJ Accredited Representative with the name and telephone number of potential sponsors who have submitted a completed **family reunification** application to ORR for their client, if the potential sponsors have provided consent to release of their information. Furthermore, and absent a reasonable belief based upon articulable facts that doing so would endanger an unaccompanied alien child, ORR must ensure that unaccompanied alien children are allowed to review, upon request and in the company of their attorney of record or DOJ Accredited Representative if any, such papers, notes, and other writings they possessed at the time they were apprehended by the U.S. Department of Homeland Security (**DHS**) or another Federal department or agency, that are in ORR or an ORR care provider facility's possession.

Revised 08/01/2024



### 3.7.4 Feedback in Relation to Legal Services

Legal service providers and attorneys of record are encouraged to work in coordination with their regional organizational representative to resolve concerns related to providing children with ORR-funded legal services in accordance with ORR policy. Emerging issues from legal service providers or related to immediate performance of legal services at care provider facilities can be elevated to ORR by sending an email to [UACLegalServicesSupport@acf.hhs.gov](mailto:UACLegalServicesSupport@acf.hhs.gov). ORR will collaborate with the regional organizational representative to address such emerging issues as needed.

*Revised 08/01/2024*

### 3.7.5 Retaliation for Action Against ORR by Legal Service Providers

ORR must presume that legal service providers and other legal representatives are acting in good faith with respect to their advocacy on behalf of unaccompanied alien children, and ORR must not retaliate against a legal service provider or other legal representative for actions taken within the scope of the legal service provider's or representative's responsibilities. For example, ORR must not engage in retaliatory actions against legal service providers or any other representative for reporting harm or misconduct on behalf of an unaccompanied alien child or appearance in an action adverse to ORR.


ORR recognizes attorneys' ethical obligation to pursue legal remedies for their client, which may include engaging in legal action that is in opposition to ORR. In addition, ORR will not maintain a list of LSPs or other attorneys who have filed actions against ORR for purposes of impeding their ability to provide legal services to unaccompanied alien children.

*Revised 08/01/2024*

## 3.8 Children with Disabilities in ORR Care and Custody

This policy provides guidance on implementing 45 C.F.R. § 410.1311. Additionally, ORR policy and procedures related to children with disabilities in ORR custody were developed pursuant to a Settlement Agreement in *Lucas R. v. Becerra*, which became effective on May 3, 2024. In accordance with the Settlement Agreement, compliance by ORR and care providers will be regularly monitored by a Court-Appointed Monitor until the Settlement Agreement terminates. Additionally, the attorneys who represented children in *Lucas R.* (known as Class Counsel) may periodically conduct confidential attorney-client visits with children in ORR custody who have been identified as having disabilities. Additionally, pursuant to the Settlement Agreement, ORR will work with experts to undertake a comprehensive needs assessment to evaluate the adequacy of services, supports, and resources currently in place for children with disabilities in ORR's custody across its network, and to identify gaps in the current system, which will inform the development of a disability plan. The needs assessment may also inform potential future policy changes that best address how to effectively meet the needs of children with disabilities in ORR's care and custody.

Consistent with section 504 of the Rehabilitation Act and HHS's implementing regulations at 45 C.F.R. part 85, ORR must administer the UAC Bureau in the most integrated setting appropriate to the needs of unaccompanied alien children with disabilities unless ORR can demonstrate that this would fundamentally alter the nature of the UAC Bureau's program. Therefore, where appropriate, ORR must make and document reasonable modifications to its program, including the provision of services, equipment, and treatment so that a child with one or more disabilities can have equal access to the UAC Bureau program in the most integrated setting appropriate to their needs. Furthermore, all children in ORR's care and custody, including children with disabilities, must be placed in the least restrictive setting in their **best interests**.

ORR's commitment to nondiscrimination aligns with the **U.S. Department of Health and Human Services' Nondiscrimination Notice**  as well as **ORR's Nondiscrimination Notice**. ORR must provide such notice in writing to the children in its custody to inform them of the protections against discrimination under section 504 of the Rehabilitation Act at 45 C.F.R. part 85 assured to children with




disabilities in its custody. ORR must also provide written notice of the available procedures for seeking reasonable modifications or making a complaint to HHS's Office of Civil Rights about alleged discrimination against children with disabilities in ORR's custody. This notice must be provided in a manner that is accessible to children with disabilities. A commitment to non-discrimination is likewise expected of all grantee and contracted programs that are part of ORR's care provider network as well as any out-of-network program engaged by ORR to provide services to children in ORR care and custody. ORR's grantee and contracted programs must have policies consistent with 45 C.F.R. § 84.7 requirements.

Concerns regarding possible violation of ORR's Nondiscrimination Notice should be emailed to [uachearings@acf.hhs.gov](mailto:uachearings@acf.hhs.gov).

*Posted 07/17/24; Special note regarding the effective date of UAC MAP Section 3.8: ORR is implementing this section of the UAC MAP while it undergoes a comprehensive needs assessment. Modifications to this section will occur throughout the assessment period with the expectation that this section will be fully implemented by May 3, 2025.*

### 3.8.1 Defining Disability for Children in ORR Custody

Children in ORR custody are presumed to have a disability if they meet the broadly-construed criteria defined in [42 U.S.C. § 12102](#)  (PDF). In accordance with federal law, a disability is present if the child has a physical or mental condition that substantially limits their ability to participate in major life activities.<sup>11</sup> This condition may currently exist or have existed in the past with the possibility of future recurrence. It also applies if the child was or is currently perceived to have a disability. However, a condition is not considered a disability if it is minor or if the child is expected to recover from the condition in six months or less.

Furthermore, a child may have a disability even if the child can perform major life activities with assistance. This assistance can include the administration of medication, provision of reasonable accommodations, aids, services, and/or the implementation of learned behavioral or adaptive neurological modifications. It also includes the utilization of assistive technology, devices, or equipment. Whether the use of eyeglasses or contact lenses is considered a disability is contingent upon the circumstances. Therefore, guidance from a medical professional to ascertain whether a child has a disability is necessary in circumstances where ordinary eyeglasses or contact lenses are utilized by the child to assist them in performing life activities.

*Posted 07/17/24; Special note regarding the effective date of UAC MAP Section 3.8: ORR is implementing this section of the UAC MAP while it undergoes a comprehensive needs assessment. Modifications to this section will occur throughout the assessment period with the expectation that this section will be fully implemented by May 3, 2025.*

### 3.8.2 Identifying Children with Disabilities in ORR Custody

Care providers may become aware of a child's disability (or disabilities) in multiple ways. First, the disability (or disabilities) may be apparent upon the child's admission to an ORR Program or discovered during the Initial Medical Examination that is conducted within two business days of the child's admission to an ORR Program in accordance with [Section 3.4.2 Initial Medical and Dental Examinations and Follow-up Care](#). Second, the care provider may learn of the child's disability (or disabilities) after a triggering event which requires that the child be evaluated for a disability. It is also possible that a treating mental health or medical professional may diagnose a child with a disability during a routine mental health or medical evaluation.

#### Disabilities Apparent at Admission or via the Initial Medical Examination

Information regarding a child's disability (or disabilities) may be conveyed to ORR at the time of their referral from another federal agency. In addition, some children, their parents, or sponsors may disclose that the child has a disability (or disabilities), or their condition(s) may be apparent upon their admission to an ORR Program. Furthermore, the results of the Initial Medical Examination (IME) may either confirm a previously disclosed condition or alert the care provider to the possibility that a child has a condition(s) that is (are) considered a disability.

Care providers are expected to promptly initiate the provision of auxiliary aids and services, supports, and reasonable accommodations or program modifications as needed for children identified as having a disability (or disabilities) that is (are) apparent or known upon or shortly after admission or through the IME. The services must incorporate guidance from a treating professional with expertise in the child's disability or disabilities. In addition, the services, supports, and accommodations must be documented in the child's Individualized Section 504 Service Plan described at [Section 3.8.3 Individualized Section 504 Service Plan](#) if one is determined to be necessary to meet the child's disability-related needs. If the care provider believes that they are unable to meet the child's disability-related needs, the care provider must immediately consult with the ORR Division of Health for Unaccompanied Alien Children (DHUAC). DHUAC will work with the care provider to ascertain whether ORR can provide additional services or support or identify community resources to assist the care provider in meeting the needs of the child. If the care provider believes that they are still unable to meet the needs of a child with one or more disabilities, even with additional support and services provided or identified by ORR, the care provider must document their concerns in accordance with [Section 1.3.3 Care Provider Placement Acceptance](#) and inform their ORR Project Officer (PO) or Contract Officer Representative (COR) immediately. A care provider's consideration of whether they can meet the needs of a child with one or more disabilities must be ascertained independently for each child and documented in ORR's online case management system along with the reasons why they believe they cannot meet the needs of the child, even with additional support or services provided or identified by ORR.

A child whose disability (or disabilities) is (are) apparent at admission or known through the IME is considered as having an identified disability (or disabilities) unless a subsequent evaluation by a professional with expertise in the disability (or disabilities) provides a written professional opinion indicating that the child does not have the disability (or disabilities). Therefore, care providers must indicate on all appropriate assessment forms that the child has a disability (or disabilities) (i.e., UAC Assessment, Case Reviews) and must proceed with the family reunification process with the expectation that a TVPRA Home Study will be required. This includes promptly arranging for the home study to occur as soon as possible and planning for and establishing post release services as soon as possible. Background checks for potential sponsors for any case referred for a home study because of a child's disability (or disabilities) may be conducted concurrently to the referral and home study process itself. Unless results of the background check are required prior to the initiation of the home study for a specified safety reason, the home study should be conducted pending receipt of background check results.

Care providers must notify the assigned legal service provider that the child has a disability (or disabilities) and refer the child for the appointment of a child advocate as soon as possible. Furthermore, care providers must inform DHUAC by emailing [ORRDHUAC@acf.hhs.gov](mailto:ORRDHUAC@acf.hhs.gov) within 24 hours of identifying that a child has a disability (or disabilities).

A child identified as having a disability that is apparent upon admission or known through the IME will not be re-evaluated based on the same presenting symptoms except upon the recommendation of a medical or mental health professional.

### **Disabilities Identified via a Professional Evaluation Required Subsequent to a Triggering Event**

A child in ORR care and custody must be evaluated by a professional to determine whether they have one or more disabilities if at least one of the triggering events listed below happens.

- If a child is hospitalized for a psychiatric-related reason.
- If a child is under consideration for hospitalization for a psychiatric-related reason.
- If a child is under consideration for placement in or transfer to a Residential Treatment Center (RTC) or similar restrictive therapeutic facility.
- If a child is under consideration for placement in a secure facility.
- If a licensed medical or mental health professional treating the child recommends an evaluation for a disability.
- At the request of the child after being informed of the purpose, scope, and nature of the evaluation. The child may make the request directly or through their parent or legal guardian, or through their attorney or a legal service representative, and/or through their child advocate.

Evaluations must begin within 30 calendar days of one of the triggering events described above. The evaluations must be conducted by a professional evaluator with expertise in the type of disability (or disabilities) or condition(s) that the child is suspected of having or with expertise in treating the symptoms of the suspected disability (or disabilities) that the child is manifesting. If the evaluator is skilled in a field that requires licensing (i.e., medical doctor, clinical social worker), the evaluator must possess a professional license in good standing. The medical or mental health professional treating the child may serve as the evaluator, if they are skilled in performing the disability-related evaluation, or they may refer the child to another professional skilled in performing the disability-related evaluation. Care providers must consult with Point Comfort Underwriters (PCU) to ascertain whether a professional evaluator is part of their network before engaging the services of that professional evaluator. In addition, care providers are encouraged to consult with and seek the assistance of DHUAC as needed on matters related to conducting evaluations or seeking a professional appropriate to conduct the evaluations.

Prior to the child's evaluation for a disability, the mental health professional and/or medical professional providing services to the child should educate the child on the process in a manner that is age appropriate, trauma-informed, explained in the child's preferred language (using interpretation services to translate if necessary) and respectful of the child's culture. If possible, the discussion with the child should include the child's parent or legal guardian as well as the professional evaluator (if already selected and available). If possible, the care provider should inform and educate the parent or legal guardian separately prior to the joint conversation with the child, emphasizing the importance of providing a supportive and empowering environment for the child during the joint conversation educating the child about the process. Topics that should be covered during the discussion with the child include, but are not limited to:

- The reason(s) that an evaluation for a disability is necessary;
- The scope of the evaluation (timeline, steps, persons involved); and
- An explanation that their reunification process will continue, but may require additional support (e.g., a TVPRA Home Study and/or Post Release Services). This discussion should emphasize that work on the additional support has already begun or will begin promptly with the goal being timely unified with their sponsor.

During the discussion and afterward, the child should be provided ample opportunity to ask questions and express their opinions in an atmosphere that is welcoming and supportive. Answers to the child's questions should be truthful, age appropriate, and handled by the person best suited to address the question. For example, a medical question should be answered by the licensed medical professional providing services to the child and familiar with their medical history. Similarly, a mental health and/or behavioral-related question should be answered by a licensed medical professional providing services to the child and familiar with their mental health and/or behavioral history.

The evaluation must commence as promptly as possible unless the child is released to a sponsor or another entity, including the Unaccompanied Refugee Minor (URM) Program. The care provider must receive a written report from the professional evaluator within 60 calendar days of the triggering event described above.

A child identified as having one or more disabilities after a professional evaluation will not be re-evaluated based upon the same presenting symptoms except upon the recommendation of a medical or mental health professional.

A referral for an evaluation or an incomplete evaluation for a disability should not delay the release of a child from the UAC Bureau unless the evaluation is necessary to inform ORR's release decision. This limitation on release delays due to an evaluation includes releases to the Unaccompanied Refugee Minor (URM) Program. The Case Manager should review [Section 3.8.4 Release of Children with an Identified or Suspected Disability](#) for guidance on how to handle any potential release delays which may occur while waiting for a professional evaluation to determine whether the assessment is necessary to make an informed release decision.

The professional evaluator's report should:

- Confirm whether the child has one or more disabilities;
- Identify the type (or name) of the disability (or disabilities) that the child has;

- Explain the symptoms manifested (or likely to be manifested) by the child due to the disability (or disabilities);
- Describe the circumstances that are likely to trigger symptoms of the disability; and
- Offer recommendations for services, supports, reasonable accommodations or program modifications to meet the child's disability-related needs and to enable the child to reside in the least restrictive setting in their best interests and the most integrated setting appropriate to their needs.

If the professional evaluator recommends placement in a more restrictive program (i.e., an RTC or other restrictive therapeutic facility, heightened supervision facility, or secure facility) the professional evaluator's written report should also include the reasons that the restrictive facility is necessary and identify the services and care that the restrictive facility must provide the child, and why the child's needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or accommodations. In the case of step-up to an RTC or another restrictive therapeutic facility, the professional evaluator's written report will only fulfill the written recommendation requirement specified in **Section 1.4.6 Residential Treatment Center and Out-of-Network Placements** if the professional evaluator is a licensed psychologist or psychiatrist who has also determined that the child is a danger to themselves or others. Otherwise, per **Section 1.4.6 Residential Treatment Center and Out-of-Network Placements** a separate recommendation from a licensed psychologist or psychiatrist is required before the child with a disability is placed in a RTC or other restrictive therapeutic facility.

A referral for an evaluation or an incomplete evaluation for a disability (or disabilities) should not delay the step-down of a child from a restrictive facility unless the evaluation is necessary to inform the next placement appropriate to serve the child. The Case Manager should review **Section 1.4.2 30 Day Restrictive Placement Review** for guidance on stepping a child down from a restrictive facility. Likewise, a pending, scheduled, or partially completed evaluation will not be a justification to delay an otherwise appropriate release of a child to a suitable sponsor, although such an evaluation may inform the suitability determination where appropriate.

Upon receipt of a professional evaluator's written report confirming that a child has one or more disabilities, the care provider must establish an Individual Section 504 Service Plan for that child in accordance with **Section 3.8.3 Individualized Section 504 Service Plan**, if one is deemed necessary to meet the child's needs.

The care provider will provide a copy of the professional evaluator's written report to the child's parent or legal guardian unless a child welfare concern exists and is documented in the child's case file in ORR's online case management system. The clinician and/or medical professional providing services to the child will explain the professional evaluator's written report to the child's parent or legal guardian in their preferred language. The clinician and/or medical professional providing services to the child will also explain the professional evaluator's written report to the child in a manner that is age appropriate, trauma-informed, and respectful of the child's culture. If possible, the clinician and/or medical professional must include the child's parent(s) or legal guardian(s) as well as the professional evaluator (if available). If possible, the care provider should explain the professional evaluator's written report to the parent or legal guardian separately prior to a joint conversation with the child, emphasizing the importance of providing a supportive and empowering environment for the child during the joint conversation educating the child about the evaluation process. At the child's request and/or with their consent, the child may ask for their attorney (or a legal service provider) and/or their child advocate to join the discussion. A copy of the professional evaluator's written report may be given to an attorney who has provided ORR a completed and signed **Notice of Attorney Representation (Form L-3)**. (PDF) The care provider must provide a copy of the professional evaluator's written report to the child advocate appointed to the child, if requested by the child advocate.

In accordance with **Section 5.10.2 Limits to Sharing Information with DHS and EOIR**, ORR and care providers are restricted from sharing certain case file information with entities under the U.S. Department of Homeland Security for immigration enforcement purposes. Likewise, ORR and care providers shall not share any evaluation report(s), related clinical or mental health documents, or Child Level Event reports (CLE) with any component of the U.S. Department of Homeland Security (DHS) for the purposes of any deportation, removal, application of relief from removal, custody hearing, or U.S. Citizenship and Immigration Services (USCIS) adjudication.

A copy of the professional evaluator's written report must be uploaded to the child's case file in ORR's online case management system within 24 hours of receipt by the care provider.

*Posted 07/17/24; Special note regarding the effective date of UAC MAP Section 3.8: ORR is implementing this section of the UAC MAP while it undergoes a comprehensive needs assessment. Modifications to this section will occur throughout the assessment period with the expectation that this section will be fully implemented by May 3, 2025.*

### 3.8.3 Individualized Section 504 Service Plan

Individualized Section 504 Service Plans assist care providers in identifying and documenting the child's disability-related needs as well as the services, supports, and reasonable accommodations that must be provided to enable the child to reside in the least restrictive setting in their best interest and the most integrated setting appropriate to their needs. The Individualized Section 504 Service Plan also incorporates disability-related requirements necessary for the completion of the reunification process (i.e., a home study), which allows the care provider to plan and commence crucial steps early in the process (i.e., identification of post-release services).

An Individualized Section 504 Service Plan must be established for every child in ORR custody who has an identified disability or disabilities, unless the child is released from ORR custody before a plan is established. Release cannot be delayed to establish an Individualized Section 504 Service Plan. This requirement applies for children whose disability is apparent at admission or via the IME. The requirement also applies for children whose disability is identified via a professional evaluation after a triggering event. The Individualized Section 504 Service Plan must be completed and implemented within 60 calendar days of identifying the child's disability. The Individualized Section 504 Service Plan may be implemented in phases or in a piecemeal manner during this time; however, implementation of the full Individualized Section 504 Service Plan must be in place as soon as is practicable, and in all cases, within 60 days of identifying the child's disability or disabilities. Continued refinement of the Individualized Section 504 Service Plan after the 60-day deadline is allowable so long as the child remains in ORR care and custody.

ORR will make best efforts to develop and implement an Individualized Section 504 Service Plan before any step-up of a child with an identified disability (or disabilities), unless the child is released to a sponsor or placed in a URM program earlier. If an Individualized Section 504 Service Plan is not developed and implemented before step-up, ORR will document in the child's case file in ORR's online case management system the specific reasons why it was not feasible to do so before step-up and will complete development and begin implementation of the Individualized Section 504 Service Plan, within 30 days of the step-up.

#### Development of the Individualized Section 504 Service Plan

Development of the Individualized Section 504 Service Plan is a collaborative endeavor that includes input from the child (if able and willing to communicate about their service plan, including preferences and needs), the parent(s) or legal guardian (if and when available), the professional evaluator (in-person or via their written report), care provider staff (i.e., clinician, case manager), medical and/or mental health staff treating the child, the child advocate appointed to serve the child, and ORR staff (i.e., Federal Field Specialist, DHUAC staff). An attorney who provides ORR with a completed and signed **Notice of Attorney Representation (Form L-3)** (PDF) may also participate in the development of the Individualized Section 504 Service Plan if the child consents.

The Individualized Section 504 Service Plan will be tailored to the needs of each child identified as having one or more disabilities. The Individualized Section 504 Service Plan must include the following components:

- Identification of the child's disability-related needs;
- Identification of the specific triggers, behaviors and/or symptoms related to the child's disability;
- Identification of services, supports, and reasonable accommodations and modifications responsive to the child's disability-related needs;
- Documentation of reasonable accommodations or program modifications required to maintain the child in the most integrated setting appropriate to the child's needs while in ORR custody;
- A transition plan for release from ORR custody; and

- Identification of Post Release Services planned or established for the child after their release from ORR custody.

In developing the Individualized Section 504 Service Plan, ORR must consider all recommendations from the professional who evaluated the child and determined that the child has one or more disabilities. ORR will include a written explanation of any significant departures from such a professional's major recommendations in the Individualized Section 504 Service Plan.

ORR will make and document efforts to place each child with an identified disability (or disabilities) in a placement that can provide access to the services and supports identified in the child's Individualized Section 504 Service Plan. ORR may, however, maintain a child in their current shelter or foster care placement upon a determination that maintaining their current placement would be in the best interest of the child.

A copy of the Individualized Section 504 Service Plan must be uploaded to the child's case file in ORR's online case management system within 24 hours of its completion. In addition, a copy of the Individualized Section 504 Service Plan shall be given to an attorney who has provided ORR a completed and signed **Notice of Attorney Representation (Form L-3)** (PDF), indicating they are representing or providing legal assistance to the child, upon their request. The care provider may provide a copy of the Individualized Section 504 Service Plan to the child advocate appointed to the child, if requested by the child advocate.

### **Review of the Individualized Section 504 Service Plan**

A review and possible revision of the Individualized Section 504 Service Plan is required as described below.

- Every six months.
- Within 30 days of a transfer to a restrictive setting (or more restrictive setting).
- Within 30 days of the hospitalization of the child for psychiatric reasons; for children with multiple hospitalizations for psychiatric reasons within a 3-month period, only one review is required within the 3-month span with the 30-day deadline for the review counted from the first hospitalization.
- At the recommendation of a licensed medical or mental health professional.

The review of the Individualized Section 504 Service Plan will consider whether it was implemented as specified and is responsive to the child's disability-related needs. Specifically, the review will determine whether the services, supports, reasonable modifications, and accommodations set out in the Individualized Section 504 Service Plan have been and are currently being provided to the child. If not, ORR will include in the revised Individualized Section 504 Plan a brief written explanation of why the Individualized Section 504 Service Plan has not been fully implemented and what steps will be taken to ensure full implementation of the Individualized Section 504 Service Plan with any needed revisions thereto. The review will revisit the identification of the child's disability-related needs and triggers and individualized plan. The review will also consider whether the Individualized Section 504 Service Plan adequately supports the child's placement in the least restrictive setting in the child's best interest and the most integrated setting appropriate for the child's disability-related needs and also includes a transition plan to enable safe release to a suitable sponsor without unnecessary delay due to the child's disability (or disabilities).

If needed, the Individualized Section 504 Service Plan will be revised through a collaborative endeavor that includes input from the child (if able and willing to communicate about their service plan, preferences, and needs), the parent(s) or legal guardian (if and when available), the professional evaluator (in-person or via their written report), care provider staff (i.e., clinician, case manager), medical and/or mental health staff treating the child, the child advocate appointed to serve the child, and ORR staff (i.e., Federal Field Specialist, DHUAC). ORR will consider whether additional or alternative services, supports, reasonable modifications, or accommodations should be provided. An attorney who provides ORR with a completed and signed **Notice of Attorney Representation (Form L-3)** (PDF) may also participate in the development of the Individualized Section 504 Service Plan if the child consents.

A copy of the revised Individualized Section 504 Service Plan must be uploaded to the child's case file in ORR online case management system within 24 hours of its completion. In addition, a copy of the revised Individualized Section 504 Service Plan shall be given to an attorney who has provided ORR a completed and signed **Notice of Attorney Representation (Form L-3)** (PDF), indicating they are



representing or providing legal assistance to the child, upon request. The care provider must provide a copy of the professional evaluator's written report to the child advocate appointed to the child, if requested by the child advocate.

### **Effect of Individualized Section 504 Service Plan on Release from ORR Custody**

ORR cannot delay the release of a child to a sponsor or entity because an Individualized Section 504 Service Plan is incomplete or because development has not begun. For children identified as having one or more disabilities while in ORR custody but released before an Individual Section 504 Service Plan could be developed and implemented, the care provider must document in the child's case file in ORR's online case management system that the child was released before the Individualized Section 504 Service Plan was completed.

*Posted 07/17/24; Special note regarding the effective date of UAC MAP Section 3.8: ORR is implementing this section of the UAC MAP while it undergoes a comprehensive needs assessment. Modifications to this section will occur throughout the assessment period with the expectation that this section will be fully implemented by May 3, 2025.*

## **3.8.4 Release of Children with an Identified or Suspected Disability**

ORR cannot delay release of a child solely because of the following reasons unless the child's disability-related needs require it:

- The process for establishing an Individualized Section 504 Service Plan has not commenced or is incomplete.
- A referral of the child for a disability evaluation has not occurred unless the evaluation is necessary for ORR's assessment of whether the sponsor is capable of caring for the child's physical and mental well-being.
- A disability evaluation is incomplete unless the evaluation is necessary for ORR's assessment of whether the sponsor is capable of caring for the child's physical and mental well-being.
- Post-release services are not in place.

Decisions regarding the release of children in ORR custody and care identified as having a disability follow the procedures described in **Section 2.7 Recommendations and Decisions on Release**.

For children with disabilities who were released from ORR custody and with the consent of either the sponsor or the child (if the child is 14 or older), ORR will, within a reasonable timeframe, share the child's treatment records with the child's new community-based provider(s), upon request. The child's treatment records must be requested in accordance with **Section 5.10.1 UAC Case File Request Process**.

*Posted 07/17/24; Special note regarding the effective date of UAC MAP Section 3.8: ORR is implementing this section of the UAC MAP while it undergoes a comprehensive needs assessment. Modifications to this section will occur throughout the assessment period with the expectation that this section will be fully implemented by May 3, 2025.*

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## **Footnotes**

1. 22 U.S.C. § 7102

2. ORR transportation requirements are based on standards cited in "Caring for Our Children: National Health and Safety Performance Standards for Out-of-Home Child Care Programs", 2nd Ed., released by the American Academy of Pediatrics, American Public Health Association and the National Resource Center for Health and Safety in Child Care.

3. The Children's Health Act of 2000 imposes requirements regarding the use of restraints and involuntary seclusion in facilities that receive Federal funding such as Medicaid and Medicare funding, and specifically includes facilities that provide inpatient psychiatric

services for children under the age of 21 years, which may apply to ORR's residential treatment centers that receive Medicaid. See 42 U.S.C. § 290ii & 290jj, et seq. The Centers for Medicare & Medicaid Services (CMS) issued regulations implementing these requirements at 42 CFR 483, Subpart G, which establishes the federal minimum standard for restraints and seclusion in these facilities. The definitions of seclusion and types of restraint in this document are based on the CMS regulations.

4. Some states prohibit the use of restraints and seclusion. States may also prohibit the use of certain types of restraints (such as chemical restraints) or impose limitations on the implementation of restraints or seclusion, such as specific time limits or requirements for a written order by licensed physicians.

5. A staff must be trained in de-escalation methodologies and should employ the methodology they used for de-escalation to facilitate the conversation.

6. Soft restraints are a type of mechanical restraint, typically made of cloth material designed to safely fit around a person's wrists, ankles, or chest. Care providers must receive approval from ORR about what type of soft restraint they plan to use before employing a soft restraint.

7. If the basis for the denial of consent is not provided to the CCU by the care provider or prescribing licensed medical professional, the CCU shall make two documented attempts to contact the Primary Consenter or Sponsor Consenter to obtain the basis for the denial of consent.

8. For hospitalizations, discharge instructions are not considered the complete medical records.

9. At an emergency facility, legal services are provided as soon as possible and to the extent practicable.

10. An attorney of record does not include class counsel for a class action.

11. 42 U.S.C. § 12102(2) notes that major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It also includes the operation of major bodily functions including the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

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[- Next >](#)



# Exhibit E

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

WESLEYAN EMPTAGE, by and through )  
his next friend and mother, Raoutitee )  
Pamela Puran, )

Plaintiff, )

v. )

MICHAEL CHERTOFF, Secretary of )  
U.S. Department of Homeland Security )  
(DHS); JULIE L. MYERS, Assistant )  
Secretary, U.S. Immigration and Customs )  
Enforcement (ICE); JOHN P. TORRES, )  
Director, Office of Detention and Removal )  
Operations, ICE; MARC MOORE, )  
ICE Field Office Director; GARY MEAD )  
Assistant Director of Detention and Removal )  
Operations at ICE; SIMONA COLON, ICE )  
Officer in Charge; JOHN POGASH, ICE )  
National Juvenile Coordinator, )

Defendants. )  
\_\_\_\_\_ )

Civil Action

No.: A-07-CA-158-SS

**DECLARATION OF  
TIMOTHY L. PERRY**

In accordance with 28 U.S.C. § 1746, I, Timothy L. Perry, make the following declaration under penalty of perjury, pertinent to the above numbered style and cause:

1. I am the Deputy Assistant Director ("DAD"), Detention Management Division, Office of Detention and Removal Operations ("DRO"), U.S. Customs and Immigration Enforcement ("ICE"), Department of Homeland Security ("DHS" or "Department"). I have served in this position since January 2005. Prior to my current position, I served as a Supervisory Detention and Deportation Officer assigned to the Headquarters office of DRO in Washington, D.C.

2. As the DAD for the Detention Management Division, I am responsible for managing the ICE detention program from a national level, to include policy development, capacity planning,

development and execution of the detention budget, and oversight of the national detention standards compliance program.

3. I make the following statements based upon my personal knowledge and access to official ICE and INS records and files.

4. One of DRO's core responsibilities is the detention of aliens. Each year, the number of aliens detained by DRO has steadily increased. In FY 2006, ICE detained 281,567 aliens.

5. In order to effectively enforce the nation's immigration laws, the Department began the Secure Border Initiative (SBI). As part of this initiative, DRO is charged with ending the former practice of "catch and release," whereby significant numbers of aliens apprehended at or near the border were issued a Notice to Appear, Form I-862, in immigration court, and then released on their own recognizance or on bail. This practice of "catch and release" meant that many of the aliens apprehended, charged, and then released, failed to appear in immigration court as required, and simply disappeared from the immigration system altogether.

6. Prior to the opening of family detention facilities, alien families caught illegally crossing the border were most often released rather than detained due to the limited amount of family bed space. Additionally, when a decision was made to take a family into federal custody, the families, including children, were detained separately.

7. This practice created enforcement vulnerabilities, in that alien smugglers were reported to have brought children across the border along with groups of smuggled strangers and attempt to pass the groups off as family units. By exploiting children in this manner, smugglers were attempting to avoid detention if apprehended. In addition, families who subjected their children to the dangers of an illegal immigration journey also benefited from the Department's former

release policy. By ending the practice of automatically releasing families apprehended at the border, the Department is able to more effectively deter human smuggling and protect children from being subjected to the high-risk situations that are associated with being smuggled into the country.

8. In light of the vulnerability created by this situation, and the desire to maintain family unity when possible, ICE contracted with Williamson County, Texas to open the T. Don Hutto Residential Center ("Hutto Residential Center") in Taylor, Texas.

9. Prior to the opening of the Hutto Residential Center, ICE was already operating the Berks Family Shelter Facility ("Berks"), in Berks County, Pennsylvania. Berks was opened in March of 2001, in response to the need for a facility that could detain families together who were in expedited removal proceedings during which detention is statutorily mandatory. See 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Berks is a very small facility with a maximum capacity of 84 individuals. Due to its limited size, the facility was unable to meet the Department's need to detain the large number of families who were being apprehended for coming into the United States illegally. Further, as the facility is located in rural central Pennsylvania, the geographic location is less than ideal for meeting all of the agency's family detention needs. Consequently, the Department made the decision to open the Hutto Residential Center which is able to accommodate a larger number of families, and is located in the Western region of the United States, where a greater number of families are apprehended.

10. With the desired goal of detaining all adults, and ending the process of "catch and release," the Department considered detaining all families separately, in that the parents or guardians would be detained in an adult facility and the children would be transferred to the care



of ORR. However, this has been unnecessary, as the utilization of the Hutto Residential Center has allowed the Department to detain families in one facility so as to permit the Department to effectively enforce the immigration laws of the United States while simultaneously maintaining family unity. Both the family units themselves, as well as the Department, benefit from the use of family detention facilities. The benefits to families include a reduction of stress on both the parents and the children, the ability to allow for continuous contact between parents and children, and the ability to allow for parents to continue making appropriate decisions for their own children on a day to day basis. Some of the benefits to the Department include a reduction in costs for placement and removal, and better control over case management.

11. Like Berks, the Hutto Residential Facility was originally used to accommodate families that were being processed for expedited removal. Expedited removal is a statutory removal process applied to certain illegal aliens apprehended near the border, whereby the aliens are expeditiously returned to their country of origin as soon as circumstances allow. This expedited process considerably shortens the average length of stay in a detention facility. For an alien subject to expedited removal the length of stay is estimated to be twenty days or less. Over time, considering the benefits to both the agency and to the families, the Hutto Residential Facility was expanded so as to accept aliens that were apprehended on the interior and were not subject to expedited removal. As such, the average length of stay at the Hutto Residential Facility has increased to an average of fifty days.

12. When contracting with Williamson County for use of the Hutto Residential Center, DRO took considerable care to specifically identify significant adaptations and improvements, both cosmetic and structural, which had to be completed to ensure that the facility would be

appropriate to care for the needs of families with children. Such required adaptations included adding safety precautions, including the installation of padding on the edges of bunk beds, modifying stair railings, and installing bedrails. DRO also specifically requested that items such as stuffed toys, arts and crafts supplies, playground equipment, and picnic tables be provided for the resident's use. Further, the facility was specifically designed to allow for all members of a family to be housed in the same living unit and to provide a private space for each family. Modifications were also made to the living areas in order to facilitate indoor recreational activities.

13. DRO has made exceptional efforts in the past, and plans to continue such efforts in the future, to make the Hutto Residential Center as pleasant for children as possible, while still maintaining a safe and secure environment for all residents. Such improvements include: painting murals on walls, plans to install additional privacy curtains surrounding the toilet facilities in the resident's rooms, allowing residents greater freedom of movement throughout the facility utilizing a "hall pass" system, and providing a greater number of multi-language reading materials, for children and adults alike.

14. The Hutto Residential Center has also been subject to significant oversight through ICE's national detention standards program.

15. In November 2000, the INS promulgated detention standards (hereinafter "ICE Detention Standards"). The standards were the result of collaboration with the American Bar Association, The Department of Justice, the INS, and other organizations involved in pro bono representation and advocacy for immigration detainees. The standards are tailored to serve the needs of ICE detainees. To address the family residential setting, these standards have been blended with

traditional juvenile standards that were used prior to the enactment of the Homeland Security Act, which transferred care of unaccompanied alien children to Health and Human Services, Office of Refugee Resettlement, to establish a baseline of performance requirements and oversight procedures for family facilities.

16. Due to the unique nature of a family facility, these requirements, standards, policies and procedures, have evolved as ICE has gained experience with this program. These changes have consistently been made with the goal of providing for the safety, security, and comfort of the family population, while at the same time, meeting the appropriate needs of the facility's complex demographics. To that end, the Assistant Secretary for ICE has actively solicited input from Non-Governmental Organizations in the ongoing development of family detention standards and their comments are being thoroughly considered as this process continues.

17. The ICE Detention Standards encompass a range of issues ranging from religious services to access to legal services and materials.

18. In order to ensure that detention facilities are operated in a safe, secure, and humane condition, INS implemented the Detention Management Control Program (DMCP) in January 2002. The DMCP is a robust inspections program that provides a series of requirements designed to ensure that inspections of detention facilities are conducted in a uniform manner and focus on compliance with the ICE Detention Standards.

19. Per the DMCP, all ICE detention facilities that detain aliens for more than 72 hours are reviewed annually using procedures and guidance outlined in the DMCP. DRO strives for one-hundred percent compliance with the applicable Detention Standards. Therefore, if a facility is found to be deficient in any portion of any standard, the facility is required to provide a Plan of



Action (POA) indicating the corrective measures that will be taken in order to address the deficiency, and DRO will follow up with the facility to ensure that corrective action has been implemented and the deficiency is corrected.

20. DRO staff also complete Special Assessments and Quality Assurance Reviews. Special Assessments are used to evaluate the facility's policies and staff actions immediately after a specific incident, for example, but not limited to, escape, death, suicide, disturbance, or allegations of staff mistreatment. Special Assessments are conducted within one to two days of the triggering incident. Quality Assurance Reviews are additional site visits are used as a quality control measure for the inspection process. During a Quality Assurance Review, a headquarters staff officer reviews a facility to ensure that the conditions of confinement and compliance levels reported in the annual review are accurate.

21. Pursuant to these policies, the Hutto Residential Facility has already been inspected twice. The first inspection took place prior to its opening in April 2006, and the facility was inspected again in July 2006. A third inspection is scheduled to be conducted in late March 2007. In order to ensure the highest level of care and treatment for its detainee population, and to ensure independent internal management oversight, ICE has created a Detention Facilities Inspection Group (DFIG) within the Office of Professional Responsibility (OPR). The purpose of the DFIG will be to independently validate detention inspections conducted by DRO by performing quality assurance over the review process, insuring consistency in application of detention standards, and verifying corrective actions. This new layer of OPR oversight will complement the current ICE DRO Detention Standards Compliance Program and ensure detention facilities are safe, secure and providing appropriate conditions of confinement. In fact, pursuant to this new policy, the



DFIG conducted a review of the Hutto Residential Facility in early March 2007.

22. On page 4 of their complaint, plaintiffs argue that ICE should use the Intensive Supervision Appearance Program ("ISAP"), which utilizes tools such as electronic monitoring (bracelets), home visits, work visits and reporting by telephone to ensure compliance with release conditions rather than placing families in the Hutto Residential Center. While ICE uses all available alternatives to detention as appropriate, detention is still the best avenue of ensuring that an alien appears for all administrative procedures and hearings as required under the INA.

23. Additionally, the ISAP program currently has institutional limitations that inhibit its wide-spread use as an alternative to family detention. Such limitations include contract provisions that currently limit the program to 1,800 participants. The program currently has 1,732 participants enrolled; therefore, is running at near capacity. Additionally, in order to enroll in the ISAP program, the participant must have a verified residence established within a 50-mile radius of the DRO/ISAP facility. There are currently only nine locations where the ISAP program can be administered. These locations do not include Texas. This limitation, combined with the civil liability constraints which prevent government-incurred costs for transporting non-criminal aliens to facilitate release, results in a considerable difficulty with utilizing ISAP for significant numbers of families apprehended near the border.

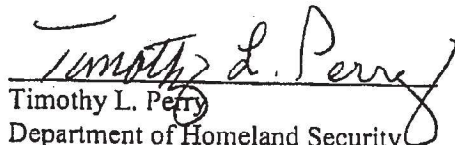
24. Moreover, existing policy concerning enrollment in the ISAP program is applied consistently to all apprehended aliens. ICE already enrolls family cases when appropriate pursuant to that policy.

25. ICE is firmly committed to ensuring that family detention facilities are operated in a safe, secure, and humane condition for children and adults alike. As stated earlier, the established

review procedures ensure comprehensive oversight of detention facilities. Inadequacies are identified and corrected, while best practices are tailored specifically to the needs of the population, thus improving operations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 15<sup>th</sup> day of March 2007.

  
Timothy L. Perry  
Department of Homeland Security  
Immigration and Customs Enforcement  
Office of Detention and Removal Operations

# Exhibit F

# **U.S. Customs and Border Protection**

## **National Standards on Transport, Escort, Detention, and Search**

**October 2015**



## **U.S. Customs and Border Protection**

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## FOREWORD FROM THE COMMISSIONER

*I am announcing the implementation of an agency-wide policy that sets forth the first nationwide standards which govern CBP's interaction with detained individuals. This policy continues our commitment to the safety, security and care of those in our custody. The policy, titled U.S. Customs and Border Protection (CBP) National Standards on Transport, Escort, Detention, and Search (TEDS), is the result of collaborative work among various offices.*

*The new policy document is grounded firmly in the experience and policies of the Office of Field Operations and the United States Border Patrol. It incorporates best practices developed in the field, and it reflects key legal and regulatory requirements. In addition to transport, escort, detention and search provisions, TEDS also includes requirements related to: sexual abuse and assault prevention and response; care of at-risk individuals in custody; and personal property.*

*I commend the many offices across CBP and DHS who worked together to produce this important policy document.*

 R. Gil Kerlikowske

Commissioner

U.S. Customs and Border Protection

## AUTHORITIES / REFERENCES

***Authorities/References (including, but not limited to, the following):*** 19 United States Code (USC) §§ 482, 1461, 1581, 1582, 1589a; Title 8 Code of Federal Regulations (CFR) Parts 232, 235, 236, and 287; 6 CFR Part 115; 79 FR 13100 (Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities); The Immigration and Nationality Act (INA); Personal Search Handbook, CIS HB 3300-04B revised July 2004; Use of Force Policy, Guidelines and Procedures Handbook, HB 4500-01C, revised May 2014; Motor Vehicle Management Handbook, HB 5200-14B, revised June 2014; Occupational Safety and Health Handbook, HB 5200-08B, revised September 2012; Secure Detention, Transport and Escort Procedures at Ports of Entry, 3340-030B, August 8, 2008; The Law of Arrest, Search, and Seizure Manual, M-69; Enforcement Standards – Body Searches, May 28, 1997; Hold Rooms and Short Term Custody, OBP 50/10.2-P; CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs, February 6, 2014; CBP Zero-Tolerance Policy, March 11, 2015.

# 1.0 GENERAL STANDARDS

## 1.1 SAFETY DURING CBP OPERATIONS

The safety of CBP employees, detainees, and the public is paramount during all aspects of CBP operations.

## 1.2 INTEGRITY AND PROFESSIONALISM

CBP employees must speak and act with the utmost integrity and professionalism. CBP employees must conduct themselves in a manner that reflects positively on CBP at all times.

## 1.3 ZERO TOLERANCE POLICY RELATED TO SEXUAL ABUSE

CBP has a zero tolerance policy prohibiting all forms of sexual abuse of individuals in CBP custody, including in detention facilities, during transport, and during processing.

## 1.4 NON-DISCRIMINATION POLICY

CBP employees must treat all individuals with dignity and respect. CBP employees will perform their duties in a non-discriminatory manner, with respect to all forms of protected status under federal law, regulation, Executive Order, or policy, with full respect for individual rights including equal protection under the law, due process, freedom of speech, and religion, freedom from excessive force, and freedom from unreasonable searches and seizures.

## 1.5 RELIGIOUS SENSITIVITY

Without compromising officer/agent safety, officers/agents should remain cognizant of an individual's religious beliefs while accomplishing an enforcement action in a dignified and respectful manner.

## 1.6 TREATMENT OF JUVENILES

Officers/Agents will consider the best interest of the juvenile at all decision points beginning at the first encounter and continuing through processing, detention, transfer, or repatriation. Officers/Agents should recognize that juveniles experience situations differently than adults (see Section 5.0).

## 1.7 REASONABLE ACCOMMODATIONS AND LANGUAGE ACCESS

Reasonable accommodations must be made for a detainee's known or reported mental, physical and/or other special needs consistent with safety, and security requirements. All instructions and relevant information must be communicated to the detainee in a language or manner the detainee can comprehend.

## 1.8 DURATION OF DETENTION

Every effort must be made to promptly transfer, transport, process, release, or repatriate detainees as appropriate according to each operational office's policies and procedures, and as operationally feasible.

## 1.9 FAMILY UNITY

CBP will maintain family unity to the greatest extent operationally feasible, absent a legal requirement or an articulable safety or security concern that requires separation.



## 2.0 TRANSPORT AND ESCORT STANDARDS

For transport and escort standards related to at-risk detainees, see Section 5.4. The at-risk determination process can be found in Section 4.2.

### 2.1 VEHICLE STANDARDS

**Safety and Compliance:** CBP vehicles used for transporting detainees must be properly equipped, maintained and operated. Additionally, these vehicles must comply with safety inspection requirements in accordance with applicable federal and state law.

**Vehicle Interiors:** CBP vehicle interiors must be kept as clean as operationally feasible.

**Search for Weapons, Dangerous Items and Contraband:** All CBP vehicles, including the confinement space and the immediate area surrounding the confinement space, must be searched prior to and following each transport to ensure that no weapons, dangerous items (including items that could be used for suicide), or contraband are present.

### 2.2 USE OF RESTRAINTS

**General:** The use of restraints on detainees during transport must be in a manner that is safe, secure, humane, and professional. It is the responsibility of officers/agents to ensure that the need and level of restraints used is consistent with the operational office's policies and procedures. At no time will restraints be used in a punitive manner or in a manner that causes detainees undue pain.

**Testing Restraints:** Officers/Agents must regularly test handcuffs, leg restraints, belly chains, or other restraining devices to ensure that they are functioning properly.

### 2.3 TRANSPORT COMMUNICATION

Officers/Agents transporting detainees must follow established communication procedures especially as they relate to juveniles, females, and other at-risk populations.

### 2.4 TRANSPORT AND ESCORT ASSESSMENT

**Assessment:** Prior to transport or escort, officers/agents must conduct a detainee transport assessment to evaluate each detainee's safety, known or reported medical or mental health issues and level of risk to themselves, other detainees, and staff based on the information available at the time of the assessment. Officers/Agents assigned transport or escort duties must be informed of any known adverse assessment pertaining to a detainee being transported or escorted.

**At-Risk Indicator:** If a transport assessment indicates that a detainee could be an at-risk detainee (see Section 4.2), officers/agents must exercise particular care during transport and escort.

### 2.5 TRANSPORTING AND ESCORTING OFFICER/AGENT RESPONSIBILITIES

**Compliance:** Officers/Agents must comply with all operational office's policies and procedures pertaining to the use of government vehicles as articulated in the most recent Motor Vehicle Management Handbook, and must operate vehicles in accordance with all appropriate traffic laws and regulations.

**Pat-down Search:** No detainee will be transported or escorted without the officer/agent conducting a pat-down search of the detainee, except when exigent circumstances pose a safety hazard or danger to the officer/agent, detainee, or public.

**Vehicle Security:** Officers/Agents must secure the vehicle before leaving it unattended. This includes removing the keys from the ignition.

**Unattended Detainees:** Officers/Agents must not leave detainees unattended in a vehicle.

**Vehicle Inspection:** At the beginning and end of each shift, a physical inspection of the vehicle's confinement area is required.

**Authorized Attire:** Officers/Agents must follow the operational office's policies and procedures related to attire. Badges and nameplates should be worn on the outermost uniform garment and be visible to the public when practicable.

**Medical Issues:** Officers/Agents must be alert to

medical symptoms such as coughing, fever, diarrhea, rashes or emaciation, in addition to obvious wounds, injuries, cuts, bruising or bleeding, heat related injury or illness, and dehydration. Any observed or reported injury or illness must be reported, and appropriate medical care must be provided or sought in a timely manner.

***Detainee Distress:*** In addition to verbal communication, officers/agents must be alert to non-verbal cues exhibited by detainees that might indicate that the detainee is in mental or physical distress. This might include expressions of suicidal thoughts, hallucinations, or other signs of disorientation.

## 2.6 GROUND TRANSPORTATION AND ESCORT STANDARDS

***Transport Determination:*** In determining the number of officers/agents and vehicles that are required for a particular transport, the transport assessment, duration of travel, destination, and other appropriate factors must be considered.

***Unsecured Vehicles:*** Using an unsecured vehicle to transport detainees should be avoided; however, operational circumstances may require officers/agents to use an unsecured vehicle to transport a detainee.

***Gender of Transporting/Escorting Officer/Agent:*** Whenever operationally feasible, transport/escort must be conducted by two officers/agents with at least one being of the same gender or gender identity as the detainee(s).

***Criminals:*** Whenever operationally feasible, detainees who are in CBP custody for a non-immigration criminal offense, or who are known to have a violent criminal history, must be separated from other detainees when being transported. Exceptions may be made on a case-by-case basis based on family unity.

***Personal Property Access:*** No baggage, luggage, parcel, or personal property shall be accessible to detainees during transport unless the items have been thoroughly searched by officers/agents and determined to present no risk to officers/agents or

any detainee. When exigent circumstances pose a safety hazard or danger to an officer/agent, detainee, or member of the public that require a delay in searching personal property, a search must be conducted as soon as practicable.

***Seatbelts:*** All CBP employees in all seats of any motor vehicle used on official business must have their seatbelt properly fastened at all times when the vehicle is in motion. This includes CBP-owned and leased vehicles and rental vehicles operated by CBP employees while in temporary duty or travel status. Detainees should always be in seatbelts if available in the vehicle.

***Safety and Security:*** Officers/Agents must maintain a clear view of immediate confinement areas to the extent permitted by the transport vehicle, and remain alert to behavior that could jeopardize the safety and security of the officers/agents, detainees, and the public. In the event a transport vehicle contains more than one officer/agent, the secondary officer/agent is responsible for detainee oversight during transport.

***Meals:*** Meals and snacks will be made available during any transfer that exceeds six hours for juveniles and eight hours for adults.

***Temperature:*** Officers/Agents should maintain vehicle temperature within a reasonable and comfortable range for both detainees and officers/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner.

## 2.7 COMMERCIAL AIR TRANSPORTATION

Prior to transporting detainees, officers/agents must conduct an air transportation assessment. The evaluation must include the detainees' potential risk for flight or escape, behavior, medical condition, and if a request for accompanying medical personnel should be made, based on the information available at the time of the assessment.

## 2.8 MEDICAL PRECAUTIONS

If officers/agents suspect that a detainee has an observed or reported medical condition, such as a contagious disease, appropriate protective precautions must be taken and any required

notifications made according to the operational office's policies and procedures.

In cases where a detainee expresses, either verbally or symptomatically, a desire to harm themselves, officers/agents should maintain a line of sight with the individual at all times.

## 2.9 EMERGENCY SITUATIONS DURING TRANSPORT

Operational offices will establish a written policy to address emergency situations. This policy must direct local offices, ports or stations to establish written procedures for transporting staff to follow in an en-route emergency and proper documentation procedures after such an emergency.

It is understood that based on the totality of the circumstances, different officers/agents may have different responses to the same situation, any of which may be both reasonable and necessary. Actions taken during an emergency situation must reflect the totality of the circumstances surrounding the situation, including the presence of imminent danger to the officers/agents or others.

At a minimum these policies and procedures must include the following situations and actions:

**Imminent Loss of Life:** If an emergency situation is life-threatening, officers/agents will take immediate action to address the situation and make appropriate notifications.

**Unconscious or Unresponsive Detainee:** If a detainee becomes unconscious or unresponsive during transport, officers/agents will immediately request emergency medical services, and render aid. If a detainee is pronounced dead by qualified medical personnel, officers/agents must make appropriate notifications.

**Illness or Injury:** If a detainee becomes ill or injured prior to boarding the vehicle or while in transit, officers/agents must alert the receiving office. If deemed appropriate, emergency medical services must be notified.

**External Threat:** Officers/Agents should request immediate assistance and take appropriate action to mitigate the situation. If the vehicle is incapacitated, officers/agents will do everything possible to protect

the safety of everyone in the vehicle.

**Escape:** In the event of an escape, pursuit of the escapee by officers/agents should only be conducted when it does not jeopardize the security of the remaining detainees or members of the public. Officers/Agents must notify appropriate law enforcement agencies with a description of the subject and known biographic data and make appropriate notifications.

**Fire:** In case of a vehicle fire, officers/agents must immediately stop the vehicle and evacuate the detainees in a safe and orderly fashion. Officers/Agents are responsible for maintaining accountability of all detainees and requesting assistance from the local fire department and law enforcement agency.

**Natural Disasters:** In the event of a natural disaster, officers/agents must contact the appropriate authorities to assess current conditions along the planned route. If driving conditions are unlikely to improve, transport must be delayed until the emergency has passed. If officers/agents are in transit and a natural disaster occurs, officers/agents must stop the vehicle in a safe area, take appropriate actions for the safety and security of all employees and detainees, make appropriate notifications, and await further instructions. Should it become necessary to exit the vehicle, the detainees must be maintained in a safe area. Officers/Agents must maintain a heightened state of alertness for the duration of the emergency. When the emergency has passed, the officers/agents must return all detainees to the vehicle while ensuring accountability of all detainees.

**Traffic Accident:** In the event of a traffic accident involving the transport vehicle, officers/agents must secure the area, obtain medical assistance for anyone who may be injured, and request assistance from the appropriate law enforcement agency. Officers/Agents must make appropriate notifications.

**Vehicle Failure:** If a vehicle develops serious mechanical problems en route, officers/agents will take appropriate actions for the safety and security of all detainees and make appropriate notifications.

***Disturbances by Detainees:*** If a detainee becomes violent or creates a disturbance that affects their or another individual's safety and security, officers/agents will take appropriate action to de-escalate the situation, and make appropriate notifications.

## **2.10 TRANSFER OF DETAINEE DOCUMENTS AND MEDICATION**

When transferring a detainee, officers/agents must ensure that all appropriate documentation accompanies the detainee including all appropriate medical records and medication as required by the operational office's policies and procedures.

## 3.0 SEARCHES OF INDIVIDUALS

For search standards related to at-risk detainees, see Section 5.5. The at-risk determination process can be found in Section 4.2.

### 3.1 REQUIREMENTS

**Legal Authority and Standards:** All searches must be conducted under the appropriate legal authority and standards. Officers/Agents must be diligent in their efforts to protect a detainee's legal rights and treat detainees with respect, dignity, and an appropriate level of privacy.

**Decision to Search:** Officers/Agents must consider the totality of the circumstances and articulable factors when making a decision to search.

**Privacy:** Recognizing the potential intrusiveness of these searches on an individual's sense of privacy, searches must be conducted only with the proper legal authority and justification, with due recognition and deference for the human dignity of those being searched, and in accordance with the operational office's policies and procedures.

**Conduct of Search:** Searches must be conducted in a professional, thorough, and reasonable manner, consistent with the type of search required. In no case should any complaint, threat of complaint, or physical resistance result in a detainee not being searched, or being searched less thoroughly than is warranted by the circumstances.

**Documentation:** Each operational office determines search documentation requirements. However, all strip searches, X-ray searches, body cavity searches, and monitored bowel movements (MBM) must be recorded in the appropriate electronic system(s) of record. The report must contain the reason for the search, results of the search, a description of any contraband recovered, who conducted the search, and who authorized the search.

### 3.2 USE OF RESTRAINTS

**General:** The use of restraints on detainees during the search process must be in a manner that is safe, secure, humane, and professional. It is the responsibility of officers/agents to ensure that the need and level of restraints used is consistent with

the operational office's policies and procedures. At no time will restraints be used in a punitive manner or in a manner that causes detainees undue pain.

**Testing Restraints:** Officers/Agents must regularly test handcuffs, leg restraints, belly chains, or other restraining devices to ensure that they are functioning properly.

### 3.3 COMMUNICATION

All search instructions must be communicated to the detainee in a language or manner the detainee can comprehend. For safety reasons, an explanation of an immediate pat-down for weapons or dangerous objects may be conducted after the search. Officers/Agents will explain the search process, in general terms, as the search progresses.

### 3.4 GENDER OF SEARCHING OFFICER/AGENT

Whenever operationally feasible, officers/agents conducting a search or that are present at a medical examination, must be of the same gender, gender identity, or declared gender as the detainee being searched.

Cross-gender strip searches or cross-gender visual body cavity searches must not be conducted except in exigent circumstances including consideration of officer safety, or when performed by medical practitioners. When officers/agents of the opposite gender perform a strip search or are present at a medical examination such as a body cavity search, MBM, or X-ray, it is mandatory that two officers/agents be present.

### 3.5 MEDICAL EMERGENCIES

Officers/Agents have a responsibility to safeguard detainees during a search. If there is any observed or reported indication that the detainee is injured or in any way may require medical treatment, appropriate medical care must be provided or sought in a timely manner.



### 3.6 PAT-DOWN SEARCH

**Immediate Pat-down/Terry Frisk:** An immediate pat-down or Terry frisk is an external search necessary to ensure officer safety. The scope of an immediate pat-down must be limited to those areas on a detainee where an officer/agent suspects a weapon or dangerous object may be concealed. There may be cases where it is necessary to search the entire detainee to ensure a weapon and/or dangerous object is not present. This may include the removal of a detainee's shoes to ensure there is no weapon present, but not the removal for the purpose of checking for merchandise (including contraband).

**Search Incident to Arrest:** An external search incident to a lawful arrest includes a search for both dangerous weapons and evidence. The facts and circumstances surrounding an arrest will dictate the degree of intrusiveness necessary to properly conduct the search.

**Non-search Related Examinations:** For the purposes of this policy, examinations of detainees conducted by officers/agents for the documentation of illness, injury, tattoos, or other identifying markings do not constitute a search. This includes examinations that involve the manipulation of or removal of a detainee's clothes or garments except to the extent that such manipulation reveals breasts, buttocks, or genitalia.

### 3.7 STRIP SEARCH

**General:** A strip search requires a person to remove or arrange some or all clothing to permit a visual inspection of the person's breasts, buttocks, or genitalia related to searches for contraband.

**Supervisory Approval:** Officers/Agents must obtain supervisory approval authorized by the operational office's policies and procedures before conducting a strip search. (Telephonic approval is permitted).

**Strip Search Documentation:** All strip searches, the reason for the search, and the authorizing supervisor must be documented in the appropriate electronic system(s) of record.

**Privacy:** All strip searches must be conducted in a manner and location that provides the greatest degree of privacy possible. The number of officers/

agents present must be limited to the minimum number needed to conduct and witness the search.

**Strip Search Conduct:** Generally during a strip search, the detainee being searched should remove their own clothing unless they refuse to cooperate. Officers/Agents should not touch the detainee during a strip search unless the detainee refuses to remove any article of clothing or otherwise impedes the officer/agent in the performance of their duties. In those rare instances where an officer/agent is required to touch a detainee or remove clothing, the circumstances must be documented.

**Communication:** Officers/Agents must ensure that the explanation of the search process is in a language or manner the detainee comprehends.

**Search of Clothing:** Each article of clothing that is removed must be thoroughly searched by the officer/agent.

**Search of Prosthetic Devices:** Removal of prosthetic devices such as an artificial limb is considered to be part of a strip search. If there is reasonable suspicion that contraband may be concealed within the device, the detainee being searched should remove the device if they can do so without medical assistance. If they cannot, or refuse to do so, the officer/agent must seek the assistance of medical personnel.

**Search of Casts:** Removal of a cast is considered to be part of a strip search. If there is reasonable suspicion that contraband may be concealed within a cast, officers/agents must take the detainee to a medical facility to have the cast X-rayed and/or removed. Under no circumstances will a cast be probed or removed by an officer/agent while it is attached to a detainee's body.

**Search of Splints:** Splints that are not able to be removed by the detainee should be removed by a medical practitioner such as a credentialed EMT. If there is any concern for the safety of the detainee, this should be done at a medical facility.

**Objects in the Rectal Cavity:** Officers/Agents should not ask a detainee to remove an object from the rectal cavity or attempt to remove it themselves. If there is reasonable suspicion that the detainee is carrying contraband in the rectal cavity, officers/

agents must consult and receive approval from a supervisor, and immediately proceed to a medical facility for a body cavity search conducted by a medical practitioner. Further action must be consistent with the operational office's policies and procedures.

**Objects in the Vaginal Cavity:** If an object in the vaginal cavity is detected and it is reasonably suspected that the object may contain contraband, officers/agents must stop the search and consult a supervisor. If the supervisor concurs that reasonable suspicion exists, the supervisor may authorize the officer/agent to ask the detainee to voluntarily remove the object. If the detainee refuses to voluntarily remove the object, officers/agents must consult and receive approval from a supervisor, and immediately proceed to a medical facility for a body cavity search conducted by a medical practitioner. Further action must be consistent with the operational office's policies and procedures.

### 3.8 BODY CAVITY SEARCH

**General:** A body cavity search is any internal search consisting of the visual or physical intrusion into the rectal or vaginal cavity.

#### **Medical Practitioner and Medical Facility**

**Requirement:** Officers/Agents are prohibited from conducting physically intrusive body cavity searches. This type of body cavity search should be conducted only under the most exceptional circumstances, and only by medical practitioners at a medical facility.

#### **Supervisory Approval for Body Cavity Searches:**

Body cavity searches will be conducted only after being approved by a supervisor authorized by the operational office's policies and procedures and after obtaining consent or a search warrant. If a qualified medical practitioner determines that immediate action must be taken to protect the health of the detainee, such action is authorized. (Telephonic approval is permitted).

**Documentation of a Body Cavity Search:** All body cavity searches, the reason for the search, the authorizing supervisor, and the outcome must be documented in the appropriate electronic system(s) of record. In the case of more physically intrusive body cavity searches, the name of the medical

facility where the search was performed must also be documented in the appropriate electronic system(s) of record.

**Communication:** Officers/Agents must ensure that the explanation of the search process is in a language or manner the detainee comprehends.

**Use of Restroom:** When a detainee who is suspected of internally carrying contraband requests to use the restroom prior to being taken to a medical facility, the detainee will be escorted to a restroom without flushable toilet facilities.

**Prohibition on Observation:** Only medical practitioners may observe a physically intrusive body cavity search. Officers/Agents may be in the room only for the purposes of corroborating any evidence found and to provide safety and security. Officers/Agents are prohibited from serving as a medical witness (standby).

**Negative Results Determination:** When a medical practitioner has determined that foreign objects are not present via a body cavity search and that no further medical treatment is required, the detainee must be immediately transported back to the CBP facility, unless the CBP supervisor determines that additional actions should be taken.

**Inconclusive Results Determination:** If a medical practitioner deems the body cavity search inconclusive, a decision must be made by the CBP supervisor after obtaining legal advice from CBP counsel to determine the next appropriate steps.

**Positive Results Determination:** If a medical practitioner believes that the body cavity search indicates the presence of foreign objects, a CBP supervisor must be notified to approve the detention of the detainee for further medical treatment, consistent with the operational office's policies and procedures.

### 3.9 MEDICAL X-RAYS

**General:** An X-ray search is an internal search consisting of the use of a medical X-ray by medical practitioners to determine the presence of contraband within the body.

**Supervisory Approval:** An X-ray search will be conducted only after being approved by a supervisor



authorized by the operational office's policies and procedures and after obtaining consent or a search warrant. If a qualified medical practitioner determines that immediate action must be taken to protect the health of the detainee, such action is authorized. (Telephonic approval is permitted).

**Documentation of an X-Ray Search:** All x-ray searches, the reason for the search, the authorizing supervisor, the name of the medical facility, and the outcome must be documented in the appropriate electronic system(s) of record.

#### **Medical Practitioner and Medical Facility**

**Requirement:** Medical practitioners will conduct the X-ray search at a medical facility. Officers/Agents are prohibited from conducting X-ray examinations or utilizing any CBP equipment to conduct an X-ray examination. Only qualified medical practitioners may read and interpret the X-ray.

**Communication:** Officers/Agents must ensure that an overview of the X-ray process, including a request for consent, is in a language or manner the detainee comprehends.

**Consent:** Consent to search must be freely and voluntarily given as it relates to X-rays before the X-ray is administered. Involuntary X-ray searches require a court order. Involuntary X-ray searches will be conducted only under the most extraordinary circumstances, and never on detainees who are pregnant or a detainee who refuses to have a pregnancy test after having been determined by medical personnel to require a pregnancy test.

**Pregnancy Test:** When a detainee is taken to a medical facility for an X-ray search, medical personnel will determine if a pregnancy test is required prior to an X-ray. If medical personnel determine a pregnancy test is necessary and the detainee refuses the pregnancy test, a decision to determine the next appropriate steps must be made by a CBP supervisor after obtaining legal advice from CBP counsel.

**Revocation of Consent:** A detainee may revoke consent for an X-ray search at any time, even at the medical facility. The revocation may be verbal or by actions. If the detainee revokes consent, officers/agents must immediately inform the medical practitioner to stop the X-ray search based on the

revocation of consent and notify their supervisor. Revocation of consent must be documented in the appropriate electronic system(s) of records.

**Negative Results Determination:** When a medical practitioner has determined that foreign objects are not present in the body and that no further medical treatment is required, the detainee must be immediately transported back to the CBP facility, unless the CBP supervisor determines that additional actions should be taken.

**Inconclusive Results Determination:** If a medical practitioner deems the X-ray inconclusive, a decision must be made by the CBP supervisor after obtaining legal advice from CBP counsel to determine the next appropriate steps.

**Positive Results Determination:** If a medical practitioner believes that the X-ray indicates the presence of foreign objects, a CBP supervisor must be notified to approve the detention of the detainee for further medical treatment, consistent with the operational office's policies and procedures.

### **3.10 MONITORED BOWEL MOVEMENT (MBM) SEARCH**

**General:** An MBM search is an internal search consisting of detaining a suspect, under close observation, to permit time for a swallowed object to be expelled by the body through natural means. The MBM involves both an extended period of detention coupled with close observation of the detainee and inspection of all fecal material, and may be necessary where the detainee refuses to submit to an examination to confirm the existence of swallowed contraband or where such examination is not considered medically appropriate. Prior to the detainee being transported to a medical facility, he or she may be placed in a CBP hold room or other designated area without flushable toilet facilities.

#### **Medical Supervision and Medical Facility**

**Requirement:** Because of the danger that internally swallowed or stuffed drug containers may rupture, the detainee must be taken to a medical facility as soon as possible and placed under medical supervision (with appropriate security) to minimize possible injury. Officers/Agents are prohibited from conducting MBM. MBM must not be conducted at CBP facilities.

**Supervisory Approval:** Officers/Agents must obtain supervisory approval authorized by the operational office's policies and procedures before a detainee undergoes an MBM. (Telephonic approval is permitted).

**Documentation of an MBM Search:** All MBM searches, the reason for the search, the authorizing supervisor, the name of the medical facility, and the outcome must be documented in the appropriate electronic system(s) of record.

**Communication:** Officers/Agents must ensure that an overview of the MBM process is in a language or manner the detainee comprehends.

### **3.11 MEDICAL TREATMENT AND AUTHORITY AT A MEDICAL FACILITY**

**Medical Decision Making:** Once a detainee is at a medical facility, medical practitioners make all medical decisions which may include medical release or fitness for travel. Officers/Agents have no authority over the detainee's medical treatment, but remain responsible for enforcement decisions regarding the detainee.

**Officer/Agent Medical Prohibition:** Except for assistance with lifesaving emergency medical care which they feel comfortable rendering and are trained to render, officers/agents will not administer medical techniques or medications, unless they are qualified emergency medical technicians or paramedics rendering care.

**Medical Treatment Protocols:** While medical treatment is based on the local standard of care and at the discretion of the medical practitioner, recommended medical treatment protocols from the DHS Chief Medical Officer are available.

## 4.0 SECURE DETENTION STANDARDS

For detention standards related to at-risk detainees, see Section 5.6. The at-risk determination process can be found in Section 4.2.

### 4.1 DURATION OF DETENTION

Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.

### 4.2 AT-RISK DETAINEE DETERMINATION PROCESS

Before placing any detainees together in a hold room or holding facility, officers/agents shall assess the information before them to determine if the detainee may be considered an at-risk detainee, or at risk of posing a threat to others. This assessment will include:

- Whether the detainee has or demonstrates a mental, physical, or developmental disability;
- Whether the detainee has an observed or reported serious physical/mental injury or illness;
- The age of the detainee;
- Whether the detainee is pregnant or nursing;
- The physical build and appearance of the detainee;
- The detainee's own stated concerns about his or her physical safety;
- Whether the detainee has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- Whether the detainee has self-identified as having previously experienced sexual victimization;
- The detainee's risk of being sexually abused by other detainees;
- Whether a detainee may be sexually abusive toward other detainees; and
- Whether the detainee has previously been incarcerated or detained (this should include the nature of the detainee's criminal or violent history, and/or gang affiliation, and whether the detainee has any convictions for sex offenses against an adult or child).

**Privacy:** Efforts should be taken to ensure that all assessments are conducted in a way that provides detainees the greatest level of privacy possible. All CBP facilities must implement appropriate controls on the dissemination of private and/or sensitive information provided by detainees under this section. Officers/Agents will disclose this information only to those personnel with a need to know according to the operational office's policies and procedures. If the information obtained under this section is maintained in a Privacy Act compliant system of records, the information may be disclosed pursuant to the routine uses identified in the applicable System of Records Notice.

### 4.3 GENERAL DETENTION PROCEDURES

**Medical Issues:** Upon a detainee's entry into any CBP hold room, officers/agents must ask detainees about, and visually inspect for any sign of injury, illness, or physical or mental health concerns and question the detainee about any prescription medications. Observed or reported injuries or illnesses should be communicated to a supervisor, documented in the appropriate electronic system(s) of record, and appropriate medical care should be provided or sought in a timely manner.

**Medical Precautions:** If officers/agents suspect that a detainee has an observed or reported medical condition, such as a contagious disease, appropriate protective precautions must be taken and any required notifications made according to the operational office's policies and procedures.

**Search:** Detainees must be searched for weapons and contraband prior to being placed in a CBP hold room.

**Gender of Searching Officer/Agent:** Whenever operationally feasible, officers/agents conducting a search or that are present at a medical examination must be of the same gender, gender identity, or declared gender as the detainee being searched. Cross-gender strip searches or cross-gender visual body cavity searches must not be conducted except in exigent circumstances including consideration of officer/agent safety, or when performed by medical practitioners.

**Safety and Security Reporting:** During shift change officers/agents must convey all known information of vulnerabilities, escape risks, criminal background or involvement, and/or violence to oncoming officers/agents.

**Gender Segregation:** Male and female adult detainees will be segregated at all times when in hold rooms. Particular care should be afforded to at-risk populations, including transgender and intersex detainees. Exceptions may be made on a case by case basis, based on family unity.

**Juvenile/Adult Segregation:** Detainees under the age of 18 years will not be held with adult detainees, unless the adult is an immediate relative or legal guardian responsible for the care and custody of the juvenile, and no other adult detainees are present in the area. Exceptions may be made on a case-by-case basis, based on family unity.

**Family Units:** Generally, family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow their operational office's policies and procedures and appropriate legal requirements. In circumstances where family units must be separated due to different immigration dispositions, such separation must be documented in the appropriate electronic system(s) of record.

**Evacuation Plan:** Every CBP facility will have an evacuation plan that is posted in the processing area. The supervisor is responsible for ensuring that all staff members are familiar with evacuation procedures.

#### 4.4 RESTRAINTS PROCEDURES

**General:** The use of restraints on detainees during detention must be in a manner that is safe, secure, humane, and professional. It is the responsibility of officers/agents to ensure that the need and level of restraints used is consistent with the operational office's policies and procedures. Detainees who are restrained must be monitored at all times. At no time will restraints be used in a punitive manner or in a manner that causes detainees undue pain.

**Testing Restraints:** Officers/Agents must regularly test handcuffs, leg restraints, belly chains, or other restraining devices to ensure that they are functioning properly.

#### 4.5 ELECTRONIC SYSTEM(S) OF RECORD

All custodial actions, notifications, and transports that occur after the detainee has been received into a CBP facility must be accurately recorded in the appropriate electronic system(s) of record as soon as practicable. The electronic system(s) of record must contain the information listed below:

- Name of the person detained
- Country of birth (COB)
- Date of birth (DOB)
- Date and time placed into a hold room or unattended secure area
- Date and time removed from a hold room or unattended secure area
- Reason detained
- Officer's/Agent's name
- Supervisor's name
- Final disposition

Whenever possible, the electronic system(s) of record should also include any of the following that apply:

- Personal belongings secured, receipted, and/or returned
- Screened for trafficking (yes/no)
- Telephone use
- Language services provided and language spoken if other than English or Spanish (including services provided to the hearing impaired)
- Medical care requested/provided/declined
- Detainee's receipt of list of legal services providers
- Bedding provided/declined
- Meals provided/meals refused
- Visual and/or verbal checks completed
- Showers, if provided
- Transporting agency, personnel identification, and mode of transportation
- Date/time departing the facility

In the event that the appropriate electronic system is inoperable, paper logs must be used until the electronic system is operational. Any information recorded on paper logs must be entered into the appropriate electronic system(s) of record once the system is available.



## 4.6 HOLD ROOM MONITORING

**Supervision and Inspections:** Officers/Agents must closely supervise hold rooms when in use.

Monitoring must occur in a regular and frequent manner. In hold rooms with visual limitations, a physical check is required. Direct supervision and control of detainees must be maintained at all facilities that do not have secure areas.

**Non-24 Hour Holding Facilities:** Prior to the closing of any hold room facility that does not operate on a 24 hour basis, a physical inspection of the hold room is required.

**Checks:** Officers/Agents will physically check hold rooms on a regular and frequent manner, according to each operational office's policies and procedures. Physical inspections must be recorded in the appropriate electronic system(s) of record as soon as practicable.

**Privacy:** Officers/Agents will enable detainees to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or MBM under medical supervision.

**Officer/Agent Hold Room Entry:** Officers/Agents of the opposite gender will announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing, except in exigent circumstances or when such viewing is incidental to routine cell checks.

**Use of Restrooms:** If restrooms are not available in the secure area, supervisors must ensure that an officer/agent is within visible or audible range of the secure area to allow detainees to access restrooms upon request.

**Voyeurism:** Officers/Agents must not engage in any act of voyeurism.

## 4.7 HOLD ROOM STANDARDS

**Capacity:** Every effort must be made to ensure that hold rooms house no more detainees than prescribed by the operational office's policies and

procedures. Capacity may only be exceeded with supervisory approval. However, under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded.

**Hold Room Checks:** Regular hold room checks should be conducted and recorded to ensure proper occupancy levels, safety, hygiene, and the availability of drinking water. Such checks should be recorded in the appropriate electronic systems of record as soon as practicable.

**Weapons and Tampering:** Hold rooms will be regularly inspected for evidence of tampering and must be cleared of all items that could be used to facilitate an escape, or as a weapon to do bodily harm to the detainee or others.

**Cleanliness:** All facilities or hold rooms used to hold detainees must be regularly and professionally cleaned and sanitized. Officers/Agents or detainees will not be expected nor required to perform such tasks.

**Use of Tobacco Products:** Use of tobacco products by detainees is strictly prohibited in hold rooms.

**Temperature Controls:** When it is within CBP control, officers/agents should maintain hold room temperature within a reasonable and comfortable range for both detainees and officers/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner.

## 4.8 CONSULAR CONTACT AND LIST OF LEGAL SERVICE PROVIDERS

As appropriate, detainees must be advised of their right to consular access in a language or manner the detainee comprehends. If requested by a detainee, consular contact will be afforded as soon as operationally feasible. Detainees referred for removal proceedings shall be provided with a list of legal service providers and their contact information.

## 4.9 TELEPHONES

Officers/Agents must grant detainees telephone access per the operational office's policies and procedures and may, at their discretion, grant telephone access to any detainee even if not required. Detainees who wish to make other than a

local call must use a calling card or call collect. Unaccompanied Alien Children (UAC) must be offered use of a telephone.

#### 4.10 MEDICAL

**Medical Emergencies:** Emergency medical services will be called immediately in the event of a medical emergency (e.g., heart attack, difficulty breathing) and the call will be documented in the appropriate electronic system(s) of record. Officers/Agents must notify the shift supervisor of all medical emergencies as soon as possible after contacting emergency services.

**Contagious Disease:** If an officer/agent suspects or a detainee reports that a detainee may have a contagious disease, the detainee should be separated whenever operationally feasible, and all other appropriate precautions must be taken and required notifications made, according to the operational office's policies and procedures.

**Medication:** Except for assistance with lifesaving emergency medical care which they feel comfortable rendering and are trained to render, officers/agents will not administer medical techniques, medications, or preparations unless they are qualified emergency medical technicians or paramedics rendering care. Medication prescribed in the United States, validated by a medical professional if not U.S.-prescribed, or in the detainee's possession during general processing in a properly identified container with the specific dosage indicated, must be self-administered under the supervision of an officer/agent. If a detainee is unable to self-administer their medications due to age or disability, officers/agents may assist the detainee. All detainee refusals of prescribed medication or medical assistance must be noted in the appropriate electronic system(s) of record.

**Non U.S.-Prescribed Medication:** Any detainee, not in general processing, with non U.S.-prescribed medication, should have the medication validated by a medical professional, or should be taken in a timely manner to a medical practitioner to obtain an equivalent U.S. prescription. Exceptions to this requirement may only be made by a supervisor in collaboration with a medical professional and based on expected duration of detention and/or elective

nature of the medication. If such an exception is made, it must be recorded in the appropriate electronic system(s) of record.

**Emergency Medical Services Transfer:** If a detainee is transferred by emergency medical services for further medical treatment, at least one officer/agent shall escort or follow the emergency vehicle and remain with the detainee until medical authorities determine whether the situation will require hospitalization or continued medical care.

**Hospitalization:** If the detainee is hospitalized, officers/agents will follow their operational office's policies and procedures, and document the hospitalization in the appropriate electronic system (s) of record. At a minimum, the discharge summary, treatment plans, and prescribed medications from any medical evaluation should accompany the detainee upon transfer or repatriation.

**Health Information Privacy:** A detainee's private health/medical information must be protected, and disseminated only to those personnel with a legitimate need to know, according to the operational office's policies and procedures.

#### 4.11 HYGIENE

**Basic Hygiene Items:** Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs. Families with small children will also have access to diapers and baby wipes.

**Showers:** Reasonable efforts will be made to provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention.

**Restrooms:** Detainees using the restroom will have access to toiletry items, such as toilet paper and sanitary napkins. Whenever operationally feasible, soap may be made available.

#### 4.12 BEDDING

Clean bedding must be provided to juveniles. When available, clean blankets must be provided to adult detainees upon request.

## 4.13 FOOD AND BEVERAGE

**General:** Food and water should never be used as a reward, or withheld as punishment. Food provided must be in edible condition (not frozen, expired or spoiled).

**Meal Timeframe:** Adult detainees, whether in a hold room or not, will be provided with food at regularly scheduled meal times. All meal service must be documented in the appropriate electronic system(s) of record. For juvenile meal timeframes, see Section 5.6.

**Snack Timeframe:** Adult detainees, whether in a hold room or not, will be provided with snacks between regularly scheduled meal times. For juvenile snack timeframes, see Section 5.6.

**Requests:** When an adult detainee requests a snack or food before the next food service, officers/agents may grant the request on the basis of the circumstances.

**Dietary Restrictions:** Officers/Agents should remain cognizant of a detainee's religious or other dietary restrictions.

## 4.14 DRINKING WATER

Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees.

## 4.15 RESTROOM FACILITIES

**Restroom Facilities:** Restroom accommodations will be available to all detainees and a reasonable amount of privacy will be ensured. If the detainee is suspected of being an internal carrier, restroom use may be monitored.

**Privacy:** Officers/Agents must make a reasonable effort to afford privacy to all detainees of the opposite gender consistent with the prohibition on voyeurism.

## 4.16 OPEN AREA SECURITY

Additional caution must be exercised to ensure the safety of the public and staff in open areas. Officers/Agents working in or transiting this area must exercise due diligence to safeguard their firearms and other weapons. Staff must also ensure that all

potential egress points are utilized in a manner that reduces escape risk.



## 5.0 AT-RISK POPULATIONS

The at-risk determination process can be found in Section 4.2.

### 5.1 GENERAL

**At-Risk Populations:** Individuals in the custody of CBP who may require additional care or oversight, who may include: juveniles; UAC; pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; or family units.

**General Standard:** CBP staff will treat all at-risk populations with dignity, respect and special concern for their particular vulnerability.

**Reasonable Accommodations:** Reasonable accommodations must be made for at-risk detainees with known or reported mental and/or physical disabilities, in accordance with security and safety needs and all applicable laws and regulations.

**Hold Room Supervision:** Officers/Agents will physically check hold rooms on a regular and frequent manner, according to each operational office's policies and procedures. Physical inspections must be recorded in the appropriate electronic system(s) of record as soon as practicable.

**Communication:** Extra efforts may be required to ensure an at-risk detainee's ability to comprehend officer/agent instructions, questions and applicable forms (such as age and/or developmentally appropriate communication, translation/interpretation services).

**Detainees with Communication Disabilities:** Officers/Agents should take steps to communicate with detainees who have communication disabilities (e.g., detainees who are hearing impaired, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) in an effective manner, utilizing available auxiliary aides and services, such as access to in-person, telephonic, or video interpretive services.

**Detainee Age:** If a detainee presents themselves as a juvenile, they will be treated as a juvenile, until established otherwise. If a detainee presents themselves as an adult they will be processed as an adult, unless a preponderance of evidence indicates they are a juvenile, in which case they will be treated as a juvenile.

**Release of At-Risk Detainees:** Officers/Agents must not release an at-risk detainee to any person or entity that officers/agents have reason to believe may harm or neglect the at-risk detainee.

**Personal Property and Legal Papers – Juveniles:** All personal property (including any U.S.-prescribed medications) and legal papers that are in the juvenile's possession, or are served upon the juvenile during processing, must accompany the juvenile upon transfer to any other agency or facility.

### 5.2 UAC SCREENINGS

In addition to the at-risk determination process in Section 4.2, CBP will ensure that all UAC will be screened for the following:

- Credible Fear determination;
- Human trafficking victimization; and
- Ability to make an independent decision.

A reasonable effort must be made to afford privacy to UAC during screening.

### 5.3 DOCUMENTATION

All custodial actions, notifications, and transports that occur after the at-risk detainee has been received into a CBP facility must be accurately recorded in the appropriate electronic system(s) of record as soon as practicable. The electronic system of record must contain the information listed below:

- Name of the person detained
- Country of birth (COB)
- Date of birth (DOB)
- Date and time placed into unattended secure area
- Date and time removed from unattended secure area
- Reason detained
- Apprehending officer's/agent's name
- Processing officer's/agent's name
- Supervisor's name

Personal belongings secured, receipted, and/or returned  
 Screened for trafficking (yes/no)  
 Telephone use, including the identity and/or relationship of the person contacted  
 Language services provided and language spoken if other than English or Spanish  
 Reasonable medical care requested/provided/declined  
 Detainee receipt of list of legal services providers  
 Bedding provided/declined  
 Meals provided/meals refused  
 Visual and/or verbal checks completed  
 Showers, if provided  
 Hospitalizations  
 Any U.S. medications prescribed  
 Transporting agency, and mode of transportation  
 Date/time departing the station  
 Time in and time out of each CBP facility  
 Required forms provided  
 Date/time of notice to ICE FOJC (if applicable)  
 Date/time of notice to ORR (if applicable)  
 Date/time of response from ICE FOJC (if applicable)  
 Date/time of response from ORR (if applicable)  
 Date/time of placement in ORR custody (if applicable)  
 Final disposition

**Electronic Systems of Record:** Documentation must be maintained for all detainees placed in CBP hold rooms in the appropriate electronic system(s) of record. In the event that the electronic system is inoperable, paper logs must be used until the electronic system is operational. Any information recorded on paper logs must be entered into the appropriate electronic system(s) of record once the system is available.

## 5.4 TRANSPORT

**Gender of Transporting Officer/Agent:** Whenever operationally feasible, the transporting of at-risk detainees must be conducted by two officers/agents with at least one officer/agent of the same gender or gender identity as the detainee. When transporting at-risk detainees of the opposite gender or gender identity, transportation staff must call in their time of departure and odometer reading, and then do so

again upon arrival, according to the operational office's policies and procedures.

### **Transport of Family Units and Adult Females:**

Whenever operationally feasible, family units and adult females must be separated from unrelated adult males by separate passenger compartments, an empty row of seats, or transported separately. During scheduled transport, family units and adult females must be separated from unrelated adult males by either a separate passenger compartment or an empty row of seats.

**Transport of UAC:** UAC must not be transported in vehicles with unrelated adults when separate transportation is immediately available. When separate transportation is unavailable, all necessary precautions must be taken to ensure the UAC's safety, security, and well-being, including separation from unrelated adults by either a separate passenger compartment or an empty row of seats.

**Child Safety Restraints:** All juveniles must be transported as safely as possible given the circumstances, which must include the use of child safety restraints when available.

**Notification of Accompanying Adult:** Whenever possible, officers/agents must inform or notify any accompanying adult relative or legal guardian when the transport of a juvenile to a medical facility is necessary for an X-ray search, body cavity search, or MBM. Such persons may be allowed to be present at the medical facility at the discretion of the CBP supervisor, and consistent with the operational office's policies and procedures.

## 5.5 SEARCH

**Gender of Searching Officer/Agent:** Whenever operationally feasible, officers/agents conducting a search, or present at a medical examination, must be of the same gender, gender identity, or declared gender as the detainee being searched.

**Gender Determination:** Officers/Agents must not search or physically examine a detainee for the sole purpose of determining the detainee's gender-related characteristics. If the detainee's gender is unknown, officers/agents will ask the detainee their gender or gender identity. If the detainee declines to state their gender, the gender will be recorded in

the appropriate electronic system(s) of record as unknown.

**Search of Individuals– Juvenile:** When a search involves a juvenile, prior supervisory authorization must be obtained in all cases with the exception of pat-down searches. Although officers/agents have the same authority to search a juvenile as to search an adult, officers/agents should weigh all factors before requesting authorization to further search a juvenile.

**Visual Body Cavity Search – Juvenile:** Officers/ Agents must not conduct visual body cavity searches of juveniles and, instead, shall refer all such body cavity searches of juveniles to a medical practitioner.

**Accompanying Adult:** If an adult parent or legal guardian accompanies the juvenile, officers/agents should explain the reasons for the search to the adult, as well as the juvenile.

**Adult Consent and Presence:** If a strip search, X-ray search, body cavity search, or MBM is necessary during the processing of a juvenile, officers/agents should seek consent from the parent or legal guardian. If the adult does not give their consent, a decision to determine the next appropriate steps must be made by a CBP supervisor after obtaining legal advice from CBP counsel. In most cases, the adult should be present during searches. If the adult is of a different gender than the juvenile, and/or the juvenile does not want the adult present when a strip search, X-ray search, body cavity search, or MBM is conducted, the adult should wait immediately outside the search room in order to afford the juvenile as much privacy as possible.

**Consultation Requirement for Certain UAC Searches:** In the case of a UAC, although consent may be granted by the UAC or HHS under limited circumstances, supervisors must consult with CBP counsel prior to conducting a strip search or before a UAC undergoes an X-ray search, body cavity search, or MBM.

**Supervisory Approval for an X-ray Search:** An X-ray search will be conducted only after being approved by a supervisor authorized by the operational office's policies and procedures and after obtaining consent or a search warrant. If a qualified medical practitioner determines that immediate action must

be taken to protect the health of the detainee, such action is authorized. The approval requirement cannot be further delegated.

**Medical Facility Requirement for X-ray Search:** Medical practitioners will conduct the X-ray at a medical facility. Officers/Agents are prohibited from conducting X-ray examinations, or utilizing any CBP equipment to conduct an X-ray examination. Only qualified medical practitioners may read and interpret the X-ray.

**Consent for an X-ray Search:** Consent to search must be freely and voluntarily given as it relates to X-rays before the X-ray is administered. Involuntary X-ray searches require a court order. Involuntary X-ray searches will be conducted only under the most extraordinary circumstances, and never on detainees who are pregnant or a detainee who refuses to have a pregnancy test after having been determined by medical personnel to require a pregnancy test.

**Revocation of Consent for an X-ray Search:** A detainee, including an at-risk detainee, may revoke consent for an X-ray search at any time, even at the medical facility. The revocation may be verbal or by actions. If the detainee revokes consent, officers/agents must immediately inform the medical practitioner to stop the X-ray search based on the revocation of consent and notify their supervisor. Revocation of consent must be documented in the appropriate electronic system(s) of record.

**Communication:** Officers/Agents must ensure that the explanation of the X-ray process and consent agreement is in a language or manner the detainee comprehends.

**Pregnancy Test:** When a detainee is taken to a medical facility for an X-ray search, medical personnel will determine if a pregnancy test is required prior to an X-ray. If medical personnel determine a pregnancy test is necessary and the detainee refuses the pregnancy test, a decision to determine the next appropriate steps must be made by a CBP supervisor after obtaining legal advice from CBP counsel.

**Documentation:** When performing a strip searches on at-risk detainees or when an at-risk detainee undergoes an X-ray searches, a body cavity search, or an MBM, all relevant facts of the search, such as

witnesses, authorizing supervisors, and consent, must be recorded in the narrative section of the appropriate electronic system(s) of record.

## 5.6 DETENTION

**Least Restrictive Setting:** Officers/Agents will place each at-risk detainee in the least restrictive setting appropriate to their age and special needs, provided that such setting is consistent with the need to ensure the safety and security of the detainee and that of others. Adult at-risk detainees will not simply be placed in the least restrictive setting available, if they strongly communicate a preference for being held in a hold room.

**Expeditious Processing:** Whenever operationally feasible, at-risk individuals will be expeditiously processed to minimize the length of time in CBP custody.

**Family Units:** Generally, family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow legal requirements and their operational office's policies and procedures. In circumstances where family units must be separated due to different immigration dispositions, such separation must be documented in the appropriate electronic system(s) of record.

**Unaccompanied Juvenile Siblings:** Whenever operationally feasible, UAC siblings should not be separated, unless deemed necessary for safety purposes. In circumstances where siblings must be separated due to different immigration dispositions, such separation must be documented in the appropriate electronic system(s) of record.

**Nursing Mother and Children:** In situations where a detained female is nursing, the child will not be removed from the care of the mother unless she poses a danger to the child or if she will be transferred to the custody of another agency for criminal prosecution.

**Separation of Children from Parents or Legal Guardians:** In those instances where a parent or legal guardian and U.S. citizen child must be separated, social services may need to be contacted to take custody of the child. CBP should ensure parents have the opportunity to arrange for care of

their children before contacting a social service agency. In those instances where a parent or legal guardian and a non-U.S. citizen child must be separated, the non-U.S. citizen child will be classified as a UAC and will be processed accordingly.

**Detention – UAC and Juveniles:** UAC must be held separately from adult detainees. A juvenile may temporarily remain with a non-parental adult family member where: 1) the family relationship has been vetted to the extent feasible, and 2) the CBP supervisor determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances.

**Transfer to the Department of Health and Human Services, Office of Refugee Resettlement (ORR):** Every effort must be made to transfer UAC from CBP to ORR custody as soon as possible, but no later than 72 hours after determining that a child is a UAC. Requested placement notifications for the UAC must be conducted and logged in the appropriate electronic system(s) of record. The reasons for any detention longer than 72 hours must be logged in the appropriate electronic system(s) of record.

**Hygiene Articles, Bedding and Clean Clothing - Juveniles:** Juveniles will be given access to basic hygiene articles, and clean bedding. When available, juveniles will be provided clean and dry clothing. Officers/Agents may give access to these provisions to any juvenile at any time.

**Meals and Snacks – Juveniles, Pregnant, and Nursing Detainees:** Juveniles and pregnant detainees will be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice.

**Age and Capabilities Appropriate Food:** Food must be appropriate for at-risk detainees' age and capabilities (such as formula and baby food).

**Showers – Juveniles:** Reasonable efforts will be made to provide showers, soap, and a clean towel to juveniles who are approaching 48 hours in detention.



**Showers – Transgender or Intersex Detainees:**

Whenever showers are provided, transgender and intersex detainees will be given the opportunity to shower separately from other detainees.

**Hold Rooms – UAC:** Hold rooms for UAC must provide the following:

- Toilets and sinks;
- Professional cleaning and sanitizing at least once per day;
- Drinking fountains or clean drinking water along with clean drinking cups;
- Adequate temperature control and ventilation; and
- Clean bedding.

**Access to Medical Care:** Any physical or mental injury or illness observed by or reported to an officer/agent should be reported to a supervisor and appropriate medical care should be provided or sought. Emergency services will be called immediately in the event of a medical emergency. Officers/Agents must notify the shift supervisor of all medical emergencies as soon as possible after contacting emergency services and document the incident in the appropriate electronic system(s) of record.

**Consular and Telephone Access – UAC:** All UAC must be advised of their right to consular and telephone access in a language or manner the detainee comprehends.

## 5.7 USE OF RESTRAINTS

**General:** The use of restraints on at-risk detainees must be in a manner that is safe, secure, humane, and professional. It is the responsibility of officers/agents to ensure that the need and level of restraints used is consistent with the operational office's policies and procedures. At no time will restraints be used in a punitive manner or in a manner that causes detainees undue pain.

**Pregnant Detainees and Juveniles:** Barring exigent circumstances, officers/agents must not use restraints on pregnant detainees or juveniles unless they have demonstrated or threatened violent behavior, have a history of criminal and/or violent activity, or an articulable likelihood of escape exists. Even in the extraordinary circumstance when

restraints are deemed necessary, no detainee known to be pregnant will be restrained in a face-down position, on her back, or in a restraint belt that constricts the area of the pregnancy. All exceptions must be documented in the appropriate electronic system(s) of record, including the facts and the reasoning behind the decision.

**Post-delivery Recuperation:** A detainee in post-delivery recuperation must not be restrained absent extraordinary circumstances that render restraints absolutely necessary.

**Active Labor or Delivery:** Restraints are never permitted on detainees who are in active labor or delivery.

## 6.0 SEXUAL ABUSE VICTIMIZATION

**General:** Sexual abuse includes: 1) sexual abuse and assault of a detainee by another detainee; and 2) sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

**Heightened Protection:** Officers/Agents must provide detainees identified under the at-risk determination process in Section 4.2 to be at high risk of sexual abuse victimization, with heightened protection. This includes continuous direct sight and sound supervision, single-occupancy hold room, monitoring in open areas or placement in a hold room actively monitored on video by an officer/agent sufficiently proximate to intervene, unless no such option is determined to be feasible.

**Imminent Risk:** When an officer/agent has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she shall take immediate action to protect the detainee.

**Disabilities:** Detainees with disabilities (e.g., detainees who are hearing impaired, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), must have access to CBP efforts to prevent, detect, and respond to sexual abuse. When necessary to ensure effective communication with detainees who are hearing impaired, such steps must include providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, any written materials related to sexual abuse will be provided in formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision. Whenever translation or interpretation services are provided, it must be recorded in the appropriate electronic system(s) of record.

**Interpretation Services Access Related to Allegations of Sexual Abuse:** In matters relating to allegations of sexual abuse, officers/agents will provide in-person or telephonic interpretation services that enable effective, accurate, and

impartial interpretation, by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation, and the supervisor determines that such interpretation is appropriate and consistent with the operational office's policies and procedures. The provision of interpreter services by minors, alleged abusers, detainees who witnessed the alleged abuse, and detainees who have a significant relationship with the alleged abuser is not appropriate in matters relating to allegations of sexual abuse.

**U Nonimmigrant Status Information:** Officers/Agents must provide timely access to U nonimmigrant status information to any detainee alleging criminal sexual abuse.

**Officer/Agent Responder Responsibilities:** Upon learning of an allegation that a detainee was sexually abused, the first law enforcement staff member to respond to the report, or his or her supervisor, must:

- Separate the alleged victim and abuser/assailant;
- Preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence;
- Request that the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating if the sexual abuse occurred within a time period that still allows for the collection of physical evidence; and
- Ensure that the alleged abuser/assailant does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating if the abuse occurred within a time period that still allows for the collection of physical evidence

**Non-Officer/Agent Responder Duties:** If the first staff responder is not law enforcement staff, the responder must request that the alleged victim not take any actions that could destroy physical evidence and then notify law enforcement staff.

***Detainee Reporting Mechanisms:*** Staff must:

Accept sexual abuse reports made verbally, in writing, anonymously, and from third parties; Inform detainees of multiple ways to privately report sexual abuse; retaliation for reporting sexual abuse, or staff neglect or violations of responsibilities that may have contributed to such incidents;

Provide instructions on how detainees may contact the DHS Office of Inspector General; Promptly record such reports according to the operational office's policies and procedures; and

Provide and inform the detainees of at least one way for detainees to report sexual abuse anonymously to a public or private entity or office outside of CBP in accordance with the operational office's policies and procedures.

***Staff Reporting Requirements:*** In accordance with the operational office's policies and procedures, staff must immediately report:

Any knowledge, suspicion, or information regarding an incident of sexual abuse against any detainee;

Retaliation against detainees or staff who reported or participated in an investigation about such an incident; and

Staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

***Sexual Abuse Reporting:*** If a known or reported victim of sexual abuse is transferred within CBP or to the custody of another component within DHS, the officer/agent must, as permitted by law, inform the receiving CBP office or DHS component of the incident and the victim's potential need for medical or social services.

If a known or reported victim of sexual abuse is transferred outside of DHS, the officer/agent must, as permitted by law, inform the receiving agency or office of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

***Access to Medical Services:*** Detainee victims of sexual abuse must have timely, (including emergency) unimpeded access to medical treatment and crisis intervention services, including sexual

assault forensics medical exam, emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care. The forensic medical examination should be done by qualified health care personnel, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified health care personnel.

***Access to Victim Services:*** If, in connection with an allegation of sexual abuse, the detainee is transported for a forensic examination to a medical facility that offers victim advocacy services, officers/agents will permit the detainee to use such services to the extent available, consistent with security needs.

***Cost of Medical Treatment Services:*** Emergency medical treatment services provided to the victim will be without financial cost and regardless of whether the victim names the abuser or assailant, or cooperates with any investigation arising out of the incident.

***Prohibition against Retaliation:*** CBP staff must not retaliate against any person, including a detainee, who alleges or complains about mistreatment, participates in an investigation into an allegation of staff misconduct, including sexual abuse, or for participating in sexual activity as a result of force, coercion, threats, or fear of force.



## 7.0 PERSONAL PROPERTY

### 7.1 GENERAL

#### **Operational Office Policies and Procedures:**

Operational offices are responsible for creating policies and procedures relating to the handling, retention, retrieval, and return of detainee personal property.

**Personal Property:** All detainees' personal property discovered during apprehension or processing and not deemed to be contraband will be safeguarded, itemized according to the operational office's policies and procedures, and documented in the appropriate electronic system(s) of record.

**Monetary Personal Property:** Special attention must be given to the security and return of the detainee's cash, currency, negotiable instruments, and debit/credit cards. The type, amount, and value of all detainee's cash, currency, and negotiable instruments must be recorded in the appropriate electronic system(s) of record.

**Legal Papers:** Copies of any legal papers signed by the detainee shall be provided to the detainee according to the operational office's policies and procedures.

**Personal Property and Legal Papers – Juveniles:** All personal property (including any U.S.-prescribed medications) and legal papers that are in the juvenile's possession, or are served upon the juvenile during processing, must accompany the juvenile upon transfer to any other agency or facility.

**Contraband:** Contraband will be properly disposed of according to the operational office's policies and procedures.

**Seized Property:** Personal property seized as evidence or seized for possible forfeiture will be handled according to the operational office's policies and procedures.

**Transfer:** Whenever operationally feasible, officers/agents will transfer a detainee's personal property with the detainee when the detainee is transferred within CBP. Officers/Agents will make every effort to transfer a detainee's personal property with the detainee when the detainee is transferred to

another agency, repatriated, and/or released. If personal property cannot be transferred with the detainee, CBP will generally hold personal property for a minimum of 30 days from the processing of a detainee. After 30 days personal property will be considered abandoned and may be destroyed.

#### **Retention and Retrieval of Personal Property:**

Detainees may designate a third-party to retain or retrieve their personal property on their behalf, including the consulate of their country of nationality.

### 7.2 PROCESSING AND STORAGE OF DETAINEES' PERSONAL PROPERTY

**Inventory:** The inventory of a detainee's personal property must be conducted in the presence of the detainee and recorded according to the operational office's policies and procedures.

**Storage of Personal Property:** A detainee's personal property will be stored in a secure storage room or area. The secure storage room or area must be maintained in a clean and orderly manner and inspected as often as necessary to protect detainee property.

**Supervisor Responsibilities:** Supervisors must routinely inspect the secure storage room or area to ensure unclaimed property is handled according to the operational office's policies and procedures.

**Supervisor Notification:** Supervisors must be notified when itemized personal property, including monetary personal property, is reported missing or damaged. Supervisors will investigate and make the appropriate notifications according to the operational office's policies and procedures.

### **7.3 NOTICE TO DETAINEES**

All personal property instructions must be communicated to the detainee in a language or manner the detainee can comprehend.

Detainees with personal property who are not being immediately repatriated to a contiguous country must receive notice of CBP's procedures relating to personal property, including:

- The process for claiming personal property upon release, transfer or removal.

- The process for having a third party claim personal property.

- The process for claiming lost property.

### **7.4 POSSESSIONS KEPT ON THE DETAINEE**

At the discretion of officers/agents, a detainee may keep some personal items in their possession, as long as a particular item does not pose a threat to the security or good order of the facility.

### **7.5 MEDICATIONS**

All medications will generally be maintained with the detainee's personal property unless other conditions warrant, such as the medication needing to be regularly administered due to need, and/or needing to be properly stored as the prescription requires.

### **7.6 IDENTIFICATION DOCUMENTS**

Documents determined to be genuine, unaltered, and issued under the proper authority to the detainee, must be returned to the detainee upon release, removal or repatriation or maintained in the detainees' personal property. Documents will not be retained based solely on apparent gender-related discrepancies in gender designations, names, or photographs, absent any other indication the document is not genuine or unaltered.

## 8.0 DEFINITIONS

Solely for purposes of this document, the below terms are defined as follows:

**Adult:** A person known or reasonably believed to be 18 years of age or older.

**Agent:** Any class of CBP employees designated by the Commissioner to perform the functions of a Border Patrol and/or Air & Marine Agent.

**At-Risk Populations/At-Risk Detainees:** Individuals in the custody of CBP who may require additional care or oversight, who may include: juveniles; UAC; pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; or family units.

**Bedding:** A (or any combination of) blanket, mat, or cot.

**Body Cavity Searches:** A body cavity search is any internal search consisting of the visual or physical intrusion into the rectal or vaginal cavity.

**Contraband:** Any item possessed by a detainee that is prohibited under CBP policies or federal, state or local law and/or regulation.

**Commercial Air Transport:** The use of aircraft not owned or controlled by the U.S. Government, to move detainees.

**Contractor:** A person who, or entity that, provides services pursuant to a contractual agreement with CBP or other federal entity.

**Custody:** The control of the detainee whose freedom of movement is directly limited.

**De-escalation:** The reasonable use of words and actions to reduce a heightened emotional and physical state, in order to facilitate a calm, rational interaction.

**Detainee:** Any person, regardless of citizenship or nationality, under arrest, restrained, or confined by CBP.

**Detention:** Restraint from freedom of movement. Physical restraint is not an essential element of detention.

**Direct Supervision:** The constant sight and sound observation of a detainee by an officer/agent. This does not include video monitoring of detainees.

**Electronic System(s) of Record:** A group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**Employee:** A person who works directly for CBP.

**Escape:** The departure of a detainee from CBP custody without authorization.

**Escape Risk:** Any detainee whom an officer/agent believes may attempt to flee from CBP custody if not prevented.

**Escort:** The accompanied movement of a detainee in CBP custody by an officer/agent.

**Exigent Circumstances:** Any set of temporary and unforeseen circumstances that requires immediate action in order to combat a threat to the security or institutional order of a facility or a threat to the safety or security of any person.

**External Search:** Non-intrusive searches conducted to determine if detainees are carrying contraband/ weapons outside of their bodies, including immediate pat-downs/terry frisks, and pat-downs.

**Facility:** A place, building (or part thereof), set of buildings, structure, or area that was constructed or retrofitted for the purpose of detaining individuals and is routinely used by CBP to detain individuals in its custody.

**Family Unit:** A group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence.

**Gender identity:** How a person sees themselves and understands their own gender identity (a man, a woman, other).

**Gender Nonconforming:** Having an appearance or manner that does not conform to traditional societal gender expectations.

**Holding Facility:** A structure that contains hold rooms, or other secure enclosures that are:  
Under the control of CBP; and  
Primarily used for the short-term confinement of individuals who have recently been detained, or are being transferred to or from a court, jail, prison, other agency, or elsewhere within CBP.

**Hold Room:** A secure area in a holding facility used for temporary confinement of detainees.

**Human Trafficking:** A modern day form of slavery involving the illegal trade of people for exploitation, or commercial gain. The use of force, fraud or coercion is used to lure victims into forced labor, commercial sexual exploitation or slavery. In cases of sex trafficking, for children under the age of 18, no force, fraud, or coercion is needed.

**Immediate Pat-down/Terry Frisk:** An external search necessary to ensure officer safety. A limited search for weapons, generally of the outer clothing.

**Immediate Relative:** A person related to a detainee in one of the following ways: spouse, parent, grandparent, child, sibling, aunt, uncle, or legal guardian.

**Internal Search:** Searches conducted to determine if detainees are carrying contraband close to or inside their bodies. Internal searches include and are limited to medical x-rays, body cavity searches, and monitored bowel movement (MBM) searches.

**Intersex:** Having sexual or reproductive anatomy that does not seem to fit typical definitions of male or female. Intersex individuals may have organs of both sexes, present at birth, due to chromosomal circumstances.

**Juvenile:** A person known or reasonably believed to be less than 18 years of age.

**Law Enforcement Staff:** Officers or Agents of CBP or a CBP facility that are responsible for the supervision and control of detainees in a holding facility.

**Medical Facility:** An accredited location where medical practitioners conduct medical exams, diagnostics, and/or provide care.

**Medical Practitioner:** A health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.

**Medical Witness:** A credentialed or qualified medical provider (such as a doctor, nurse, medical student, paramedic) of a healthcare facility legally competent to serve as a witness to a medical event such as a procedure or exam. Medical bystanders often provide assistance to the event and may be called on for legal testimony related to the event.

**Medication:** A medicine used to treat an illness or injury.

**Monitored Bowel Movement (MBM):** An MBM search is an internal search consisting of detaining a suspect in a room or holding cell without flushable toilet facilities, under close observation, to permit time for a swallowed object to be expelled by the body through natural means.

**Officer:** Class of CBP employees designated by the Commissioner, responsible for the inspection of arriving and departing persons, conveyances and baggage at ports of entry.

**Open Area:** An area within a holding facility where the detainee is not in a locked room but where there are locked doors to prevent escape (e.g., a processing room).

**Operational Office:** Components within CBP including the Office of Field Operations, the U.S. Border Patrol, and the Office of Air and Marine.

**Pat-down Search:** An external search consisting of the sliding or patting of the hands over the clothed body of a detainee by staff to determine whether the individual possesses weapons and/or contraband. A pat-down search may require the detainee to reveal pocket contents.

**Personal Property:** Belongings found on the detainee's person or carried by a detainee (e.g., a detainee's baggage, money, personal identification, clothing, jewelry, mobile device, medication). This does not include items deemed to be contraband.

**Probe/Probing:** The use of an instrument to explore the inside of an object physically attached to a detainee (e.g., cast, brace, etc.).

**Processing Area:** The secure location in a CBP facility where officers/agents conduct interviews, record detainee responses, and enter required information into appropriate electronic system(s) of record.

**Reasonable Suspicion:** A particularized and objective basis supported by specific and articulable facts for suspecting a person of violating the law.

**Restraints:** CBP-approved equipment used to restrict a detainee's movement.

**Search of an Individual:** Any search of a person conducted for an official law enforcement purpose. This includes: immediate pat-down/*Terry* frisk, pat-down search, search incident to lawful arrest, strip search, medical X-ray search, body cavity search, and monitored bowel movement.

**Secure Area:** An area, including a hold room, processing area, or open area where an individual is detained for a temporary period of time and where the likelihood of escape is minimized because points of egress are secured to prevent unauthorized use.

**Secured Vehicle:** A transport vehicle that is equipped with security measures that separate detainees from officers/agents, and limits detainee egress from the vehicle.

**Sexual Abuse:** Sexual abuse includes: 1) Sexual abuse and assault of a detainee by another detainee; and 2) Sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

**Sexual Abuse of a Detainee by Another Detainee:**

Sexual abuse of a detainee by another detainee includes any of the following acts by one or more detainees, prisoners, inmates, or residents of the facility in which the detainee is housed who, by force, coercion, or intimidation, or if the victim did not consent or was unable to consent or refuse, engages in or attempts to engage in:

Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;

Contact between the mouth and the penis, vulva, or anus;

Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object;

Touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or

Threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act.

**Sexual Abuse of a Detainee by a Staff Member, Contractor, or Volunteer:**

Sexual abuse of a detainee by a staff member, contractor, or volunteer includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the detainee, engages in or attempts to engage in:

Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;

Contact between the mouth and the penis, vulva, or anus;

Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

Intentional touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications, aimed at coercing or pressuring a detainee to engage in a sexual act;

Repeated verbal statements or comments of a sexual nature to a detainee;



Any display of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident; or  
Voyeurism.

**Staff:** Employees or contractors of CBP or CBP facility, including any entity that operates within the CBP facility.

**Short Term Detention:** The temporary detention of a person at a CBP facility for the least amount of time necessary to complete processing, transfer, and/or repatriation.

**Strip Search:** An external search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

**Supervisor:** Any permanent or acting officer/agent, designated and authorized to oversee staff and make management level decisions.

**Trafficking Victim:** A person forced into human trafficking.

**Transgender Individual:** A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

**Transport:** The physical movement of a detainee by vehicle, vessel or commercial air transport.

**Unaccompanied Alien Child (UAC):** A child who:  
has no lawful immigration status in the United States;  
has not attained 18 years of age; and  
with respect to whom:  
(i) there is no parent or legal guardian in the United States; or  
(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

**Unsecured Vehicle:** A transport vehicle that is not equipped with security measures that separate detainees from officers/agents, and may not limit detainee egress from the vehicle.

**U Non-Immigrant Status:** U nonimmigrant status for victims of criminal activity designated in INA §101(a)(15)(U) (qualifying crimes) who have suffered substantial mental or physical abuse as a result of

being a victim of criminal activity, possess information concerning the crime, and are being helpful to law enforcement and government officials in the investigation or prosecution of the criminal activity.

**Vehicle:** A craft designed for land-based transportation.

**Vessel:** A craft designed for water-based transportation.

**Volunteer:** An individual who donates time and effort on a recurring basis to enhance the activities and programs of CBP.

**Voyeurism:** Inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring an inmate detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.

**Weapon:** Any object, item, or device that may be used to cause physical injury, incapacitate, or diminish capability, temporarily or permanently.

**X-ray Search:** The use of a medical X-ray by a medical practitioner to determine the presence of contraband within the body.

# Exhibit G



**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES; <i>et al.</i> ,	)	Case No. CV 85-4544-DMG
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
PAMELA BONDI, Attorney	)	
General of the United States; <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**DECLARATION OF DA NISHA M HELLAND**

I, Dawnisha Helland, hereby declare that the following statements are true and correct to the best of my knowledge, information and belief:

1. I am the Deputy Assistant Director for Juvenile and Family Management (JFMD), Non-Detained Management Division, Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS) in Washington, D.C. I oversee all national juvenile and family custody programs, including ICE's Family Residential Centers (FRCs).
2. I have been with ICE ERO since 2013. Prior to working for ICE ERO, I served in the United States Army as a Human Intelligence Collector/French linguist, and the United States Border Patrol (USBP) as a Border Patrol Agent.
3. I am responsible for leading a dedicated, high-level operational division created to manage immigration issues related to unaccompanied alien children (UAC), young

adults, and family units (FAMU), and developing and implementing goals, policies, procedures, and operational plans that are sensitive to this population's vulnerabilities and needs.

4. On July 29, 2022, I was appointed by the Court to serve as the Juvenile Coordinator for ICE.
5. I am submitting this affidavit in support of the Government's Motion to Terminate the *Flores* Settlement Agreement.

**Historical Highlights of Family Residential Centers**

6. In March 2001, ICE began operating an FRC in Berks County, Pennsylvania (Berks), which included holding FAMUs who were processed for expedited removal.
7. In June 2014, ICE opened a temporary FRC in Artesia, New Mexico (Artesia) while more permanent facilities were being established due to the steady increase in the number of families entering the United States.
8. In July 2014, ICE opened an FRC in Tarrant County, Texas (Tarrant).
9. In December 2014, ICE opened an FRC in Dilley, Texas (Dilley).
10. After Tarrant and Dilley were opened, the temporary FRC Artesia closed on December 31, 2014, as intended.
11. In February 2021, ICE ceased its use of Berks for FAMUs.
12. In 2021, ICE began phasing out the use of FRCs and on December 10, 2021, the last FRC was closed.
13. In March 2025, ICE reopened the Tarrant facility to house detained FAMUs.
14. In April 2025 ICE discontinued the use of Tarrant as a FRC, resumed the use of Dilley as a FRC, and transferred the FAMUs who were housed at Tarrant to Dilley.

**FRC Usage is Necessary for the Safety and Security of Our Borders**

15. FRCs are necessary to reduce the absconder rate and to provide an option for housing members of FAMUs together if the head of household failed to comply with the terms of their release conditions while in immigration proceedings or failed to comply with an immigration judge's order of removal. FAMUs detained at FRCs are often held under mandatory detention provisions, such as (a) expedited removal or (b) the reinstatement of the removal and may also be subject to final orders of removal. In addition, ICE may need to detain FAMUs during the pendency of their case who are not subject to mandatory custody but pose a flight risk. Without FRCs, the ability of ICE to monitor cases of FAMUs and execute removals of FAMUs is compromised.
16. While FRCs were closed between 2021 and 2024, ICE attempted to address FAMU migration numbers through non-detained programs such as family expedited removal management (FERM), which focuses on FAMUs in expedited removal proceedings, and by sending appointment letters (G-56 Initiative) to non-detained families. These programs have limitations and had mixed results.
17. FERM is a program that focuses on FAMUs processed under Expedited Removal proceedings who asserted a fear of persecution or torture. FERM enrollment allows ICE to release these FAMUs with conditions. The FERM family unit head of household (HoH) is placed in ICE's Alternatives to Detention (ATD). ATD uses the Intensive Supervision Appearance Program (ISAP) with Global Positioning System (GPS) monitoring with a mandatory home curfew. The family unit head of household enrolled in FERM is required to have two technology-based monitoring tools: 1. a wearable device for continuous GPS tracking and 2. a SmartLIN compatible device to allow for ongoing communication. Once FERM FAMUs receive a final order of removal, ICE can

- contact and communicate with participants using those technology devices as ICE can send notification to the GPS device or use SmartLIN to communicate via telephone.
18. From FY21 - FY24, a total of 326,824 FAMU HoH were enrolled in ATD (non-FERM). The number of FERM participants in FY23-FY24 was 14,436 FAMU HoH.
  19. The effectiveness of immigration enforcement efforts is significantly diminished without an option for detention. Without FRCs, the only option is to release aliens in a family unit, which is not an option under the President's executive orders.
  20. While utilizing ATD rather than detention, a total of 69,312 FAMUs Head of Households absconded from ATD between fiscal years 2021 and 2024.
  21. ICE considers an absconder from the ATD program to be an individual who has failed to report, who has been unresponsive to attempts by the Government to contact him or her, and whom the Government has been unable to locate.
  22. During the period starting June 1, 2023 and ending February 28, 2025, FAMUs placed on ATD (electronic monitoring) in the FERM program had a 16 absconder rate. During the same period, FAMUs not placed on electronic monitoring and enrolled in only check-in programs, had a 68 absconder rate. These data are from ICE's G-56 Initiative.
  23. The number of participants ICE can place on ATD is limited due to budget (cost of technology devices and monitoring services) and limited human resources. Thus, it is generally not operationally efficient and not cost effective to apply technology throughout a FAMU's entire immigration process, which can take many years to resolve. Because of this, ICE must regularly review ATD cases on a case-by-case basis and escalate or de-escalate the level of monitoring technologies based on prior compliance and the procedural posture of the immigration case.
  24. ICE regularly terminates participants from the ATD program based on these case reviews and places FAMUs on non-detained case management. Consequently, many FAMUs are in non-detained case management without monitoring technology or reporting requirements. Once their case status changes or there is a need to serve a

decision or notice in person, ICE requests the FAMUs to report to an ICE office via sending an appointment letter, G-56, to the last address on file which results in more no-shows as explained in paragraph 16. A significant number of FAMAs who were terminated from the ATD program and to whom ICE has sent a G-56 to the last address on file, however, do not report as required.

25. Since June 2023, ERO issued 12,815 G-56 letters to FAMU head of households with a final order of removal but are no longer on ATD. Of those, 8,627 letter recipients failed to respond.
26. Moreover, a substantial percent of FAMUs who received final orders of removal and were directed to report for removal either destroyed or removed their monitoring devices and absconded. In Fiscal Year 2023, from June to September, which is when the program was initially implemented at a small scale, 14 FAMU individuals (including all members of the family) absconded after removal was scheduled and after they were notified to report in for removal. This is 3.3% of total FAMU individuals scheduled for removal in the FERM program. In Fiscal Year 2024, 1,332 FAMU individuals absconded after removal was scheduled and after they were notified to report in for removal. This is 19% of total FAMU individuals scheduled for removal. In Fiscal Year 2025, 692 FAMU individuals absconded after removal was scheduled and after they were notified to report in for removal. This is 31% of total FAMU individuals scheduled for removal.
27. Contrary to Congressional mandates to detain, the Flores Settlement Agreement release requirements and budget constraints resulted in many FAMUs being released without any type of monitoring technology. As noted, ICE issues an appointment letter, G-56, for them to report to ICE office for case review, service of decision or document, and removal. When a FAMU fails to respond to the letter or fails to report as requested, it is a failure to report, and, therefore, a violation of the conditions of release.
28. When ICE can execute a removal order against a FAMU, the use of FRCs is also necessary. Because removal arrangements can take more than 72 hours in some cases,

depending on factors such as flight schedules and country requirements, FRCs provide a safe setting for FAMUs to await removal together and prevent FAMUs from absconding.

29. In 2020, ICE updated its standard governing FRCs, the Family Residential Standards, which likewise set the standards for the care and custody of FAMUs and juveniles. See ICE, Family Residential Standards (FRS): Program Philosophy, Goals, and Expected Outcomes, [https://www.ice.gov/doclib/frs/2020/1.0\\_Overview.pdf](https://www.ice.gov/doclib/frs/2020/1.0_Overview.pdf) (viewed May 19, 2025). The FRCs conditions of detention are governed by the Family Residential Standards. ICE may make minor modifications to these standards depending on circumstances, such as when detention times are anticipated to be very short, but the facilities will generally meet all substantive requirements.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 21st day of May, 2025.

DAWNISHA M  
HELLAND

Digitally signed by  
DAWNISHA M HELLAND  
Date: 2025.05.21 11:37:15  
-04'00'

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Dawnisha Helland  
Juvenile Coordinator  
Deputy Assistant Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security

# Exhibit H



# Family Residential Standards (FRS): Program Philosophy, Goals, and Expected Outcomes

## Overview of the Family Residential Model

The U.S. Immigration and Customs Enforcement (ICE) family residential program promotes family unity by allowing parents and legal guardians and their children to remain together in a family-friendly environment while meeting their legal obligations in ICE custody. ICE's use of Family Residential Centers allows the necessary time to ensure public safety, check familial relationship claims, protect children from exploitation, disrupt human trafficking and smuggling networks, confirm sponsorship availability, identify and process asylum claims, and place qualifying families on appropriate community-based supervision plans while fulfilling their immigration requirements. Accordingly, ICE's family residential program ensures the Federal Government meets its obligations under current law, court orders, and regulations while demonstrating ICE's commitment to maintaining family integrity. ICE is also committed to housing family groups in a manner that focuses on the safety and well-being of children and their parents/guardians.

ICE Family Residential Centers (FRCs or Centers) afford families in ICE custody a structured, safe environment that emphasizes individual accountability and positive interactions between residents and staff. The ICE residential model affords residents significant freedoms and access to engaging and educational programming and services.

FRCs provide programs and services that encourage and strengthen family interaction and growth. Parents/guardians are expected to maintain responsibility for their children and take an active role in their development. Centers strive to employ individuals who have child-centered and social services education and work experience.

Effective family residential program management is achieved through communication, counseling, and cooperation between staff and residents, and adherence to Center rules and norms.

Establishing this staffing and program philosophy is critical to managing the program's complex dynamics. Additionally, because the ICE residential model requires effective communication and interaction between staff and residents, program staff members have frequent opportunities to identify resident needs and provide referrals for appropriate services.

These Family Residential Standards (FRS) are only applicable when family units are in residence. The Center administrator will contact the ICE Enforcement and Removal Operations (ERO) Field Office Director (FOD) and Juvenile and Family Residential Management Unit (JFRMU) Chief for direction when family units are not in residence.

## ICE FRS

The first edition of the ICE FRS, released in 2007, was developed by independent subject matter experts (SMEs), government officials, and representatives of nongovernmental organizations

## **Family Residential Standards (FRS): Program Philosophy, Goals, and Expected Outcomes**

(NGOs). After several years of operations and data collection through a rigorous monthly and semiannual inspection program, ICE commenced a top-to-bottom review of the first-edition FRS. This review included an analysis of past and current best practices at the FRCs, and focused on improving the standards to more effectively manage a residential program. ICE ERO's JFRMU established a review team led by a child-focused SME with experience in assessing conditions of confinement and residential programming. The team assessed ICE FRC practices and policies, and interviewed existing Center management and direct care staff, as well as ICE ERO officers, health care and mental health providers, and case managers working at the Centers. These interviews allowed participants the opportunity to recommend improvements based on their experiences. The review team also sought to implement improvements to the standards that directly addressed feedback received from private sector agencies and NGOs. The review team synthesized those findings and incorporated relevant changes into this second-edition FRS.

JFRMU also engaged other U.S. Department of Homeland Security (DHS) Headquarters components to review and provide input for this second edition of the FRS. Further, JFRMU secured the assistance of various SMEs in areas such as emergency planning, detention administration, trauma informed care, child development, and legal rights and representation to evaluate the draft standards.

### **Purpose and Applicability**

This primary standard describes the overall philosophy and goals of the family residential program. Each individual family standard flows from this standard. All Center policies, procedures, and practices must adhere to the expected outcomes and expected practices outlined in this standard.

NOTE: Centers are expected to adhere to all applicable federal, state, and local laws and licensing requirements as well as the FRS. When there is a conflict, the more stringent shall apply. Guidance may also be sought from JFRMU at any time.

### **FRS Expected Outcomes**

1. The ICE residential housing model will promote family unity.
2. Children and their accompanying parents/guardians will have unfettered access to each other at all times, absent exigent circumstances (e.g., medical emergencies).
3. Centers will comply with federal and state nondiscrimination laws and DHS regulations and policy regarding residents with limited English proficiency (LEP) and disabilities. Centers will provide residents with disabilities with an equal opportunity to access the Center's information, services, programs, and activities, which may include the provision of accommodations, modifications, and auxiliary aids and services. Centers will also provide residents with LEP with meaningful access to their programs, services, and activities.
4. Center rules will promote parent/guardian accountability for resolving intra-family conflict.
5. Centers will operate in accordance with the DHS Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement, 6 CFR part 115 *et seq.*, and associated ICE policy and field guidance.

## **Family Residential Standards (FRS): Program Philosophy, Goals, and Expected Outcomes**

6. Parents/guardians will care for and supervise their own children. Parents/guardians and staff will work collaboratively to implement corrective action when necessary.
7. Center staff members are responsible for ensuring that all residents, both adults and juveniles, follow Center rules.
8. Disciplinary actions must be appropriate for the age and developmental level of the resident. Disciplinary actions must not interfere with family unity (e.g., forced separation of parents/guardians and their children is prohibited) other than for the minimum amount of time necessary to protect resident or staff safety.
9. Center operational plans will both enhance free movement of the resident population and encourage family unity.
10. Center staff will have educational backgrounds and work histories commensurate with the needs of a residential program.
11. Centers will assign case managers to each family group. Case managers will provide group and individual services to the resident population.
12. Centers will actively seek appropriate community service organizations to augment Center-provided resident programming.
13. Centers will offer structured programs and activities that are specific to the population served.
14. Centers will establish resources and programs that promote effective parenting techniques that are grounded in child and adolescent development concepts.
15. Centers, Field Offices, JFRMU, HSA, OPLA and other stakeholders (as appropriate) will have defined communication protocols to ensure that all are kept informed regarding serious or significant incidents, inspections, policy changes, and actions that could impact Center operations.

## **Expected Practices**

### **A. Family Unity**

Center rules and practices will promote family unity. Family members are allowed unrestricted access to each other at all times while in residence, except when children are attending school or when contact between family members must be limited due to medical conditions. Children and their parents/guardians may continue to interact with each other, with staff assistance, while children are attending school and during medical appointments or other interventions that limit general contact.

Residents will be assigned bedrooms in accordance with ICE's current resident housing procedures, as outlined and approved by the JFRMU Chief.

### **B. Temporary Separations of Family Members within Centers**

Occasionally, while in residence, parents/guardians must be separated from their children temporarily because of acute medical conditions or due to allegations or incidents of abuse or

## **Family Residential Standards (FRS): Program Philosophy, Goals, and Expected Outcomes**

violence. When separations occur as a result of allegations or incidents of abuse, the family will be allowed to congregate together under staff supervision unless a medical or mental health provider determines the child fears the parent/guardian and in-person meetings are clinically contraindicated; the Center Administrator, in consultation with the ICE Field Office and JFRMU Chief, deems the parent/guardian a danger to the child; or an investigating authority (e.g., law enforcement or child protective services) requests separation. In medical cases, families will be allowed to congregate together to the extent the Center's Health Services Administrator (HSA) deems medically permissible. The Center Administrator and HSA, as appropriate, will review these temporary separations daily to determine whether they should continue, and will notify the ICE Field Office and JFRMU Onsite Coordinator of the separation status on a daily basis. Separating families for other reasons (including by referral of the child to the U.S. Department of Health and Human Services) should be avoided unless necessitated by the medical incapacitation of the parent/guardian, or to protect the immediate life, health, or safety of the child(ren) or parent/guardian. The Field Office Director (FOD) and JFRMU Chief must approve all such family separations in accordance with current ICE policy or guidance.

In other instances, family members may retain their ability to move freely about Center buildings and the campus but may require additional monitoring by Center staff (e.g., during a resident hunger strike, or during investigations of an allegation of child neglect). In those instances, relevant safety plans must be established that will include the type and frequency of monitoring by Center staff. ICE and JFRMU must receive daily updates on the status of any residents under enhanced monitoring. Should a resident's actions result in the Center Administrator recommending restrictions on his or her free movement or a temporary family separation, the Center Administrator will consult the FOD and the JFRMU Chief prior to implementation.

In all instances requiring a temporary separation of family members, ICE will endeavor to reunite the family as soon as possible and advisable. Only ICE—including the FOD, the JFRMU Chief, and the Office of the Principal Legal Advisor—in collaboration with the Center HSA may determine that a particular situation and/or danger to the residents makes reunification impossible.

### **C. Disability Rights and Language Access**

ICE considers adherence to its language access responsibilities and its obligations to provide equal access for residents with disabilities to be of critical importance to resident life, health, and safety. Therefore, these considerations must be included in all Center policies, practices, and operations. These themes must be fully incorporated into every Center activity that implements and operationalizes the tenets of each FRS.

#### **1. Meaningful Access for Residents with Limited English Proficiency**

Centers will diligently identify each resident's primary or preferred language and, when the resident is also limited English proficient (LEP), provide information to that resident in a language he or she understands to ensure that the resident has meaningful access to Center programs, services, and activities. No resident, to include children or other family members housed in the Center, will be used for interpretation services for another resident except in emergencies and only with both residents' consent. When Center staff needs to communicate with a resident with LEP whose preferred language Center staff does not speak fluently, the Center must use a qualified interpretation service. Centers generally will provide Spanish translations of all written materials

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whenever necessary to ensure meaningful access to Center programs, services, and activities, as well as to protect due process rights, for residents who read Spanish. Centers also will translate written material for other frequently encountered language groups with LEP.

Centers will follow current ICE admission protocols to identify members of indigenous populations and their preferred language. Centers will document each resident's primary or preferred language and secondary language in his/her resident files. Centers will establish a method for staff to readily identify the resident's primary or preferred language as he/she moves throughout the Center, such as through an annotation on the resident's ID badge or other practicable method. Centers will provide members of indigenous populations with LEP with ready access to language services and ensure those residents are made aware of how to access Center resources, as described in the resident handbook and local supplement and during orientation. Centers will employ a variety of language access resources and methods to include telephonic and in-person interpretation, written translations, audio/video presentations, flashcards, etc., and ensure staff remains well-informed on how to access and use them. In addition, Centers will include those activities listed in the *ICE Language Access Plan* dated June 14, 2015, the *ERO Language Access Plan*, or any subsequent guidance, as appropriate.

All documents requiring a resident's signature for the resident file either will be translated into the resident's preferred language or will include a written note stating the Center provided the resident with interpretation services in the resident's preferred language and how the interpretation was provided. Both the resident and the staff member who provided the interpretation services will sign the note.

### **2. Equal Access for Residents with Disabilities**

Centers will act affirmatively to prevent disability discrimination, and will comply with all applicable Federal, state, and local nondiscrimination laws and with DHS regulations and policy regarding individuals with disabilities, including those governing physical accessibility as well as access to programs, services, and activities. Centers will provide accommodations, modifications, and auxiliary aids and services to residents with disabilities to afford them an equal opportunity to participate in, access, and enjoy the benefits of the Center's information, activities, services, and programs.

Throughout the Center's programs and activities, including at any time when disability-related accommodations are discussed, the Center must take appropriate steps to allow for effective communication with residents with disabilities to afford them an equal opportunity to engage in the Center's programs and activities. Such steps may include the provision and use of auxiliary aids or services for residents with vision, hearing, sensory, speech, and manual impairments. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual resident, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids or services are necessary, the Center will give primary consideration to the request of the resident with a disability.

Further, to provide equal access to the Center's information, activities, services, and programs for residents with disabilities, the Center will provide accommodations and/or modify policies, procedures, practices, and materials, as necessary. When considering what accommodations or



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modifications to provide, the Center will engage in an interactive and individualized process that considers the resident's needs and gives primary consideration to the preferences of the resident with a disability.

Moreover, all accommodations, modifications, and auxiliary aids and services will be provided in the least restrictive setting possible and the most integrated setting appropriate to the needs of the resident with a disability.

Additional detail on ensuring equal access for residents with disabilities is available in FRS 4.8, *Disability Identification, Assessment, and Accommodation*.

### **D. Admission and Release**

Center admission and release protocols will be conducted with attention to the needs of a sensitive population. Admissions areas will provide play items and other developmentally appropriate recreation materials for children. In addition, an area will be provided to accommodate families with young children or toddlers. This area will include activities, games, and toys, and will have appropriate staff available to closely monitor areas and activities designated for small children.

As detailed in FRS 2.11, *Sexual Assault and Abuse Prevention and Intervention*, Center staff will be regularly trained on and will maintain awareness of the requirements of the DHS PREA regulations, 6 CFR part 115 *et seq.*, and their protections for those in DHS custody. In accordance with ICE policy and field guidance on FRC housing assignments, as well as the DHS PREA regulations, staff will use the documentation accompanying each new arrival for identification and classification purposes. If the classification staff members are not ICE/ERO employees, then ICE/ERO will provide only the information needed for housing assignments.

The housing classification process determines the appropriate housing assignment for each family. New residents will remain segregated from the general population during the orientation and classification period, to the maximum extent practicable.

Center staff will follow ICE-approved safe release procedures and coordinate with ICE to ensure that adult and minor residents are released in accordance with existing ICE policy and practice, and with concern for their well-being and safety. When residents are released from the Center, staff must provide residents with supplies of food and other necessary childcare items sufficient for the length of their trip. Center staff will provide guidance to residents (and other interested parties such as family members or sponsors) regarding upcoming travel arrangements and requirements, to include expected release times or time ranges and the expected method of travel. Release procedures will promote child safety and may include coordination with private sector organizations and/or NGOs capable of providing supportive services to residents.

### **E. Adult Free Movement**

Centers will establish policy and procedures that allow adult residents to move freely throughout the Center structure and outdoor space without direct staff escort during designated times each day, which include the following:

- Outdoor campus free movement will be, at minimum, from 8 a.m. until dusk, seven days a week.

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- Indoor free movement will include all programming areas and will be, at minimum, from 8 a.m. until 8 p.m. seven days a week.

### **F. Resident Accountability**

Centers will conduct resident census in accordance with the ICE Family Residential Standard on *Resident Census*. Residents are responsible for checking in with designated staff during census. Centers will not routinely require residents to return to a designated area for purposes other than resident census. Routine census will not interfere with legal visitation.

Centers will use a scheduling system for residents' in-house appointments and will notify the residents of scheduled appointments, which they are then responsible for attending.

Generally, Center programming, services, and activities should be available during the free movement timeframes. Centers may develop more limited schedules for leisure activities, visitation, and the use of recreational areas, the legal library, telephones, media resources, and dining rooms only when necessary due to physical plant design limitations or certificate of occupancy limitations. In those instances, Centers will ensure equal access for all residents through weekly monitoring and will make schedule or other programming modifications as required.

### **G. Parent/Guardian Supervision and Movements of Children**

One of the adult residents' primary responsibilities in FRCs is to care for and supervise their own children, and to ensure their children understand and comply with Center rules and norms. Parents/guardians must be informed that they have these responsibilities while in residence at the Center. Center staff will work with parents/guardians to develop appropriate responses to their child(ren)'s behaviors when such behavior conflicts with Center rules. Staff will work collaboratively with parents/guardians to implement corrective action when necessary.

Should parental/guardian intervention prove unsuccessful in curbing ongoing negative behaviors, staff will intervene, as they ultimately are responsible for ensuring all residents, both adult and juvenile, comply with Center rules to ensure the safety of the residential community as a whole. In those cases when staff intervention is necessary, parents/guardians will continue to be included in all discussions concerning their child(ren)'s behavior.

The goal of behavior modification always will be to decrease the probability of future negative behavior, and Center staff will strive to build on the individual's strengths.

Centers must establish procedures to locate the parent/guardian of any unattended child and reunite them; and staff must apply these procedures consistently in all cases. Upon admission, parents/guardians will be given a "free movement pass" for each accompanying child aged 12 and older. Children ages 12 and older will be allowed to participate in the free movement program when authorized by their parent/guardian. Notwithstanding this freedom for children aged 12 and older, parents/guardians still are expected to monitor their child(ren)'s movements and generally know their child(ren)'s whereabouts at all times. Parents/guardians may issue and revoke these passes at will. Staff also may revoke free movement passes in accordance with the ICE Family Residential Standard on *Behavior Management*. When a child is in possession of a free movement pass, he/she must display it so staff is aware the child is not under the direct supervision of a



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parent/guardian at that time. Children ages 11 and under are not allowed to participate in the free movement program. These children and all older children not participating currently in free movement are expected to remain under the immediate supervision of their parents/guardians, except when the child is participating in structured activities or the Center's monitored care program. Free movement for children will not apply during educational hours.

### **H. Parent/Guardian Accountability**

Parents/guardians are prohibited from using corporal punishment while at the Center. Centers will develop policy and procedures for reporting suspicions, allegations, and incidents of child abuse or ongoing documented neglect. Staff must act immediately on any allegations or known incidents of child abuse or a pattern of documented neglect; report the same to Center management and ICE; and refer the affected children for medical evaluation as appropriate. Depending on the situation, notification to local law enforcement and State/local child protective services also may be required. Center policy and procedures will define such situations. If, at any time, staff observes that a child is injured, staff must refer the child for medical evaluation, and the Center must conduct an internal investigation to determine the cause of the injury or to confirm the accounting of how the injury was sustained. Centers must forward investigative reports to ICE at the conclusion of the investigation. Center staff will cooperate fully with local and State law enforcement and State and local child protection agencies. Further, Center staff will follow all relevant laws and regulations regarding incidents at the Center, including any mandatory reporting requirements.

### **I. Discipline and Behavior Management**

Due to the nature of Residential Centers, there are few codified sanctions for violating Center rules. Accordingly, effective consensus-building and conflict resolution are key elements to maintaining staff and resident harmony. In all cases in which a child is to be counseled, a parent/guardian must be present and be afforded the opportunity to participate in any discussion regarding possible consequences.

Centers will establish a broad array of resident activities that may provide incentives for positive behavior. Loss of privileges or access to these incentives may be used as a form of informal behavior modification.

### **J. Staffing Requirements**

Centers will recruit, hire, train, employ, and retain staff with educational backgrounds and work histories commensurate with the needs of a residential program and the population to be served. Staffing provisions will be as follows:

- Centers will establish the minimum number of staff that must be on duty, by shift; ICE must approve these Center staffing plans in advance of their implementation;
- Gender-specific needs will be addressed when establishing staffing schedules. In co-ed Centers, at least one female and one male staff member will be available at all times;
- Centers will meet the minimum staffing requirements for each shift;

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- Staff must remain at their assigned area until relieved or otherwise authorized to leave the area;
- On-duty staff will be alert, engaged, and prepared to respond to the residents' needs; and
- Staff must supervise all areas occupied by residents.

Centers also will establish a resident supervision plan in coordination with and subject to approval by the JFRMU Chief. The resident supervision plan provides for ongoing safety checks 24 hours per day, and must comply with any applicable federal, state and local laws, or other applicable licensing requirements. Generally, evening and overnight checks will occur no less than every 30 minutes, but times may be adjusted due to physical plant limitations, ICE/JFRMU requirements, and/or State requirements. All checks must be conducted unobtrusively and so as not to disturb sleeping residents. During evening and overnight hours, staff is prohibited from shining any form of light toward or in the residents' faces, or making loud noises that may disrupt or wake sleeping residents. Dim ambient light or other ICE-approved lighting solutions may be used to allow staff to confirm the presence of residents, but type and use must be well-defined and restricted.

### **K. Program Activities**

Centers will develop organized and structured programs designed to facilitate residents' adjustment to the FRCs, provide educational and recreational opportunities, support a positive residential environment, bolster parent/guardian-child interactions, and strengthen parent/guardian-child bonds. These programs will be available seven days a week, and last as long as or longer than free movement periods. Residents will be afforded Internet access in the Center social library. Centers will employ filtering software to restrict access to objectionable sites and other sites identified by ICE. Residents will be afforded access to Internet-based email but will be restricted from accessing social media websites and applications.

### **L. Case Management**

Centers will assign a case manager to each family. The case managers will provide counseling and guidance on accessing Center programs and services and other tasks that directly support residents' access to and engagement in Center programs and services. The case manager also will provide resident orientations and educational opportunities, and assist residents in communicating with other service providers as needed. Additionally, case managers will be required to meet at least every 10 days with each head of household to ensure he/she can access Center programming and services, and to document those interactions. Center case managers will not be used to perform other direct care (e.g., security-related duties), except temporarily during an emergency if necessary.

Juveniles will have the opportunity to attend at least two group counseling sessions per week. This is usually an informal process and occurs with all minors present. Minors will have the opportunity to get acquainted with staff, other minors, and the rules of the program. Sessions will be an open forum where all participants will have an opportunity to speak. Daily program management will be discussed, and participants will be able to provide suggestions, discuss issues, and resolve problems.

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**M. Monitored Care**

Parents/guardians must be able to access monitored short-term care for their children in instances when they prefer that their children not accompany them to certain appointments or interviews that may be inappropriate for children. Parents/guardians may access short-term care during court hearings, adult educational classes, onsite or off-site medical and mental health appointments, attorney-client interviews, ICE interviews, asylum interviews, legal orientation program presentations, town hall meetings, religious activities, and other occasions that Center and ICE management deem acceptable. Parents/guardians also may use short-term care while they participate in the Center's Voluntary Work Program. Centers will offer short-term care during free movement hours, seven days a week. Centers' short-term care operations must adhere at all times to the requirements of the Centers' State certifications and other applicable licenses—including, but not limited to, staff-to-child ratios and staff training. Centers may, as a means to augment the services already provided by the monitored care program, employ structured, age-appropriate recreational activities for groups of children to provide their parents/guardians temporary respite from active child supervision.

**References**

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Behavior Management
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard of Disability Identification, Assessment, and Accommodation
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Recreation
- ICE Family Residential Standard on Resident Census
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Staff Training
- ICE Language Access Plan, June 14, 2015

# 1.1 Emergency Plans

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures a safe environment for residents and employees by establishing contingency plans to respond quickly and effectively to emergency situations (e.g., fire, adverse weather conditions, civil disturbance, or hunger strikes by residents) to minimize their severity and to protect the health and safety of residents and staff.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers shall have in place contingency plans to respond quickly and effectively to emergency situations and to minimize their severity.
2. Emergency plans will comply with all State or local licensing requirements.
3. Staff shall be trained annually, at a minimum, in emergency preparedness and implementation of the Center's emergency plans.
4. An evacuation plan will be in place in the event of a fire or other major emergency.
5. Centers will approve emergency plans locally in accordance with this standard and update them annually, at a minimum.
6. Staff members will record and document events, staff responses, and command-related decisions accurately during and immediately after emergencies.

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7. Plans will include procedures for handling special-needs residents during an emergency or evacuation.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Emergency Plans* dated 12/21/2007.

## Expected Practices

Centers will afford residents basic U.S. Occupational Safety and Health Administration protections.

### A. Staff Training

Each Center will include emergency preparedness as part of the initial orientation and training provided to all new employees, and all staff will be trained annually, at a minimum, on the Center's emergency plans.

Other training requirements—for example, climate monitoring, special response teams (SRTs), disturbance control teams (DCTs), hostage negotiation teams (HNTs), video equipment, and the command post—are specified in other sections of this standard.

### B. Staff Awareness to Circumvent Center Disturbances

#### 1. Climate Monitoring

Staff alertness to changes in Center “climate,” promptly reported, can be critically important in defusing a potentially dangerous situation. Management experience indicates that certain circumstances may contribute predictably to increased tensions in a resident population. Often, such issues can be controlled or lessened before erupting into an incident or disturbance.

Staff will be trained to watch for signs of mounting tension among the resident population, such as a spike in the number of resident requests and incident reports; sullen, restless, and short-tempered behavior; or residents avoiding contact with staff (including eye contact).

Factors known to exacerbate tensions that may lead to group disturbances include, but are not limited to:

- Racism;
- Heightened complaints about food;
- Dissatisfaction with the performance or attitude of a post officer;
- Increasing complaints about recreation, medical care, visits, mail, etc.;
- Gang activity;
- Prohibited sexual activity; and
- Inaccurate or incomplete information about resident cases or Center policies.

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Training will include discussing staff actions, which may prevent or de-escalate resident unrest by:

- Discussing plans, programs, and procedures among staff;
- Engaging in open dialogue between staff and residents to address concerns;
- Continuing to treat residents fairly and impartially;
- Reducing misunderstandings among residents (for example, by enforcing and explaining rules that prevent any individual or group from imposing its will on other residents);
- Resolving misunderstandings and conflicts as they arise;
- Encouraging participation in work and recreational programs;
- Routinely reporting to the Center Administrator on Center climate and resident attitudes; and
- Alerting supervisors at the first sign(s) of trouble, gang activity, group hostilities, etc.

Quick, decisive staff action can prevent the start or spread of a disturbance.

The Center Administrator will develop written procedures for staff to follow when reporting an emergency and should notify Center staff in a timely manner when changes are made to the emergency plan.

**3. Pre-incident Considerations**

When all attempts to defuse a volatile situation have failed, the Center Administrator will determine how to proceed, based on considerations of the safety, welfare, and protection of residents, personnel, the general public, and property.

**C. Contingency Plan Development****1. Basic Planning**

Centers will develop emergency plan policies and procedures and plans to address site-specific emergencies as described in this standard. Centers will maintain a master plan that will include the policies, procedures, and a copy of each plan with the related memoranda of understanding (MOUs) or other formal agreements.

- General: A general section will contain policy and procedures as detailed in this standard.
- Specific Plans: The sections will contain contingency-specific plans, as detailed in this standard.

**Responsibility.** Every Center will designate a primary and secondary staff responsible for developing and implementing emergency contingency plans, including staff training and emergency equipment maintenance. All plans will comply with the ICE/Enforcement and Removal Operations (ERO) Standards for confidentiality, accountability, review, and revision included in this section.

- Each plan will include procedures for rendering emergency assistance (e.g., supplies, transportation, and temporary housing for residents, personnel, and/or temporary duty

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staff) to another ICE/ERO Center.

- The Security Manager or Center Administrator designee is the individual responsible for developing each contingency plan and implementing the plan when an emergency situation occurs. In the development process, he/she will rely upon the expertise of all department heads and ensure all departments have understood and are fully prepared to execute their responsibilities under the plan. Each Center will maintain an accurate inventory of identified equipment and will review that inventory every six months, at a minimum, to ensure its accuracy.

**Planning with Other Agencies.** Each Center will develop contingency plans with local, State, and Federal law enforcement agencies and organizations, including the following:

- 911;
- Fire rescue;
- Sheriff's and/or police departments;
- Emergency Medical Services;
- Local public utilities;
- Local emergency management agency; and
- Local hospitals.

Centers will formalize those plans with MOUs (or other formal agreements).

Center/ICE legal staff and/or the Office of the Principal Legal Advisor will review the MOUs for legal sufficiency and, in particular, adherence to other agency rules regarding arrest authority, use of intermediate and deadly force, jurisdiction, and outside-agency involvement.

The Center Administrator or agency designee and representatives from the affected agencies will co-sign the MOUs (or other formal agreements).

Simulated exercises to test the contingency plans will occur on a regular, mutually agreed-upon basis and recur annually at a minimum.

The Center Administrator will review and approve contingency plans annually at a minimum.

The MOUs (or other formal agreements) will include:

- Services and equipment that may be provided;
- Emergency contact information for notification sheets;
- Any restrictions on services;
- Designated staging areas and command information for the local agency;
- Annual Center tours, participation in emergency drills, and annual reviews; and
- An acknowledgment that the related organization will comply with local, State, and Federal laws and regulations when responding to Center emergency situations.



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If any local, State, or Federal agency deemed essential to emergency planning declines to participate, then the Center Administrator will inform the Field Office Director (FOD) in writing and make periodic contact to revisit the issue.

After these relationships have been established, Centers will:

- Provide these organizations Center plans that relate to the specific organization;
- Provide these organizations updated and revised plans in a timely manner;
- Update MOUs (or other formal agreements) annually;
- Forward plans and related MOUs (or other formal agreements) to the respective FOD and the Juvenile and Family Residential Management Unit (JFRMU) Chief when they are signed or updated, and upon completion of the mandatory annual plan review; and
- Initiate periodic contact with organizations that declined to participate to revisit the issue. All contacts will be documented by the Center Administrator.

**2. Keeping Plans Current**

The Security Manager or Center Administrator designee will:

- Update the plans as often as necessary and forward them for Center Administrator approval. If the Center Administrator requests changes, then the Security Manager or Center Administrator designee will incorporate necessary changes and resubmit the plans within 30 days. Center staff also will be notified of changes;
- Conduct annual contingency plan reviews, with participation of every department head;
- Document annual reviews and plan approvals on the contingency plan file master copy, even when a review results in no changes;
- Conduct one annual live drill that includes medical staff and agencies or departments who have Center MOUs (or other formal agreements); and
- Conduct a minimum of three additional drills per year. These drills may be tabletop exercises.

**3. Safeguarding Plan Confidentiality**

Every plan that is under development or is final must include a statement prohibiting unauthorized disclosure. Staff may not discuss any aspect of a plan within hearing distance of a resident, visitor, or anyone else not permitted access to the plan.

The Security Manager or Center Administrator designee will determine where copies of plans are to be stored, and in what quantity. A master copy will be kept outside the secure perimeter, along with an itemized list of plans and where to find them.

The Security Manager or Center Administrator designee will implement a checkout system that accounts for all plans at all times, with safeguards against resident access. Release of contingency plan details requires the written approval of the Center Administrator.

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The Security Manager or Center Administrator designee will send an electronic file containing the Center's contingency plans to the FOD and JFRMU Chief. Electronic files containing the Center's contingency plans will be marked CONFIDENTIAL.

**4. Organization of the Contingency Plan File**

**General Plans.** A general section will contain policy, procedures, and plans common to most emergency situations.

**Contingency-specific Plans.** The sections that follow the general section will contain contingency-specific plans, as detailed below. They may reference the provisions of the general section and will reference the exceptions and/or additions only applicable to the particular contingency.

**D. General Implementation of Contingency Plans**

Each Center will establish written policy and procedures addressing, at a minimum:

- Chain of command;
- Command post/center;
- Staff recall;
- Staff assembly;
- Emergency response components;
- Use of force;
- Video recording;
- Records and logs;
- Utility shutoff;
- Employee conduct and responsibility;
- Public relations; and
- Center security.

The respective FOD will maintain current data on the physical capacities of each Center that can be used to quickly assess the scope of an emergency, to respond appropriately, and to identify the best source(s) of emergency assistance quickly.

**1. Chain of Command**

The Center Administrator will identify the chain of command for directing operations in an emergency.

**2. Command Post**

**Equipment for the Command Post.** In case of an emergency, continuity of service will be required. Centers will develop a plan to establish a primary command post outside of Center living and activity areas. The FOD will approve command posts located outside the living and

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activity areas that, at a minimum, are equipped as follows:

- Internal/external telephone capabilities;
- Private outside lines with:
  - A speakerphone for open conference calls between the Center and Field Office, to include JFRMU command posts as applicable; and
  - A second outside line to conduct all other calls.
- A separate line for internal communications;
- Radio equipment set for Center frequencies, local law enforcement communications where permitted, and, as applicable, other Federal law enforcement agencies;
- A computer with Internet capabilities;
- A Center plot plan, including property maps, current building blueprints, local maps, and overhead photographs;
- Video recordings of building interiors within the secure perimeter (showing doors, windows, closets, ceilings, floors, etc.);
- Contingency plans—one or more copies;
- HNT equipment;
- A videotape or DVD player/television;
- A voice-activated recorder or conventional tape recorder;
- A video camera;
- Assault/breaching plans (building-specific, as appropriate for the Center); and
- A supply kit containing general supplies that may be needed (at a minimum: logbooks, blank rosters, purchase orders, and writing instruments).

**Staffing the Command Post.** The highest ranking staff will control the decision-making process until the arrival of a senior ICE official designated by the FOD. Command post staffing will include, but is not limited to, the following:

- Center Administrator or incident commander;
- Assistant Center Administrator;
- Security Manager or Center Administrator designee;
- A staff member to log activities in chronological order;
- A staff member to manage communications with ICE/ERO, maintaining open lines of communication during the situation; and,
- A staff member to control traffic into and out of the command post to ensure alertness and to prevent mistakes:

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- Command post staff must rotate shifts with personnel from the relief roster after each shift;
- Command post staff will be relieved by personnel from the relief roster for short breaks during each shift; and
- A briefing should take place that covers the events of the previous shift and any activities carrying over to the next shift.

**Activating the Command Post.** The Security Manager or Center Administrator designee will activate the command post at the Center Administrator's direction.

The activated command post will open the conference-call line immediately to the FOD and JFRMU Chief. The FOD and JFRMU Chief may wait until the scope of the unfolding incident is known before deciding to activate their command posts.

The Center's command post will remain activated 24 hours per day until the situation is resolved or until the Center Administrator, in consultation with the FOD, determines activation to be no longer necessary.

**Testing and Training.** Emergency preparedness activities will include activating the command post telephone lines and other logistical support systems monthly, at a minimum, to test equipment and familiarize staff with the command post and its equipment.

### **3. Emergency Recall List**

The Center control center is required to maintain a list of the telephone numbers of every staff member, administrative/support services staff, emergency response components, and law enforcement agencies. The Center should feature the following notice prominently:

"This information must be safeguarded. Use is restricted to those who need the information in the performance of their official duties. Misuse may subject the user to criminal liability. This agency will view any misuse of this information as a serious violation of the employee code of conduct, which may result in disciplinary action, including removal."

Centers will implement procedures to verify that contact information remains current.

For emergency response purposes, the control center also will maintain a current roster of all Field Office, headquarters, and onsite JFRMU staff contact information.

### **4. Staff Assembly**

The Center Administrator will:

- Develop control center procedures for executing an all-staff recall;
- Designate primary and secondary areas for staff assembly, preferably in a location where they cannot be observed by residents; and
- Designate backup areas for each primary and secondary area and specify exceptions, if any, for a specific contingency.

**1.1 Emergency Plans****5. Emergency Response Components**

The Center Administrator will ensure that the appropriate personnel are trained, and will establish and maintain DCTs, SRTs, and HNTs based on ICE criteria.

The DCT will consist of staff members trained in protective equipment who are capable of a response to a crisis. They will have access to less-than-lethal response tools, including standard riot batons and chemical agents.

SRTs are highly trained, well-equipped tactical teams capable of providing both less-than-lethal as well as lethal response options.

HNTs are trained negotiators whose goal is to bring successful resolution to a crisis through verbal dialogue.

If the Center does not have the capacity to establish or maintain these emergency response components, then the Center Administrator will develop formal agreements or MOUs with local, State, or Federal agencies, as appropriate, for these resources.

**6. Use of Force**

Staff will comply with the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints* and any other applicable ICE policies on the use of force when using force in an emergency situation.

Emergency plans will be based on, and consistent with, ICE policy governing the use of force, as reflected in the following three documents:

- ICE Interim Use of Force Policy (July 7, 2004), as amended or updated;
- ICE Authorized Firearms for Enforcement and Removal Operations (September 29, 2016), as amended or updated; and
- “ERO Addendum to Interim ICE Firearms” memorandum to FODs from Wesley J. Lee, Acting ICE Director (July 11, 2005), as amended or updated.

**7. Video Equipment**

At least one video camera will be maintained in the control center for use in emergency situations, and the Center Administrator will ensure that it is maintained, tested, and supplied in accordance with the Maintaining Audiovisual Recording Equipment and Records section in the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints*.

The ICE Family Residential Standard on *Use of Physical Control Measures and Restraints* also details requirements and procedures for video-recording use-of-force incidents.

Shift Supervisors or Center Administrator designees, along with other designated staff, will be trained to use video equipment and receive additional training on technical issues such as how to identify tapes or DVDs and photographs by date and location.

**8. Records and Logs**

The Center Administrator will designate the command post staff member who will keep a date-and-time chronological logbook record of events during the emergency, including:

**1.1 Emergency Plans**

- All command-related decisions and discussions, noting the names of the persons involved in the discussions;
- The decisions made;
- Telephone calls, numbers, and persons contacted; and
- Radio transmissions and responses received.

Radio transmissions will be documented by a voice-activated or conventional tape recorder whenever possible.

Command post staff also will maintain a reading file to update staff coming on duty.

**9. News Media/Public Relations**

The ICE Office of Public Affairs (OPA) is responsible for coordinating briefings with news and television media. All media releases will be coordinated through the Field Office OPA.

**10. Center Security**

The Center Administrator will provide written procedures for:

- Resident recall and lockdown;
- Counts (in accordance with the ICE Family Residential Standard on *Resident Census*);
- Intensified security;
- Security key access (including issuance and accountability, drop chute, etc.); and
- Evidence seizure and preservation.

**11. Health Services Responsibilities**

The Center's Health Services Administrator (HSA) will develop procedures for providing immediate and follow-up medical care to residents and staff under every emergency scenario outlined in the Contingency-specific Plans section in this standard. The HSA will make plans available to the Center's emergency planner(s).

**12. Food Service Responsibilities**

The plan will specify procedures for updating the Food Services Administrator (FSA) on issues such as the number of people who will be on duty and require meals.

The FSA will make contingency plans for providing meals to residents and staff during an emergency, including access to community resources, which the FSA will negotiate during the planning phase.

**13. Maintenance Department Responsibilities**

The plan will provide for emergency utility control, including plot plans identifying locations of water and gas shut-off valves and electrical circuit breakers. It is suggested that the utility shut-offs be photographed and included in the plans for quick identification during an emergency.

**1.1 Emergency Plans****14. Employee Conduct and Responsibility**

The plan will address professional conduct and responsibility with instructions and guidelines including what to do if taken hostage.

**15. Center Access Routes**

The plan will specify alternate access routes that enable emergency personnel to reach the Center if the main approach becomes dangerous or inaccessible (during a civil disturbance, adverse weather conditions, fire, etc.).

**16. Nearby Residents**

The plan will specify how and when staff will notify nearby businesses and residents of emergency situations, including the type of emergency, actions being taken, evacuation routes (if applicable), and special precautions.

**17. Communications Equipment/Radio**

The plan will specify whether the remote battery charging units will be maintained in the control center or outside the secure perimeter. A determination as to the type of radios being used in the Center will dictate whether the battery charging units will be maintained outside the secure perimeter. If the radios can be taken off-line and rendered useless, then the battery charging units may be maintained inside the secure perimeter. If not, then they will remain outside the secure perimeter.

**18. Post-emergency Procedures**

The post-emergency part of the plan will include the following action items:

- Isolating the residents involved in the incident;
- Treating and documenting employee and resident injuries;
- Seizing, documenting, and preserving evidence;
- Assigning accountability (especially for sensitive equipment and staff);
- Assessing damage and necessary repairs;
- Collecting written reports;
- Coordinating legal actions/prosecutions;
- Debriefing involved staff, and following up for additional analysis and/or implicated changes in policy or procedures; and
- Conducting a general review and critique of emergency operations and management, with a follow-up agenda including, but not limited to:
  - Monitoring the Center climate; and
  - Revising the contingency plan.



**1.1 Emergency Plans****E. Contingency-specific Plans**

The Center will compile individual contingency-specific plans, as needed, and approved by the FOD in the following order:

- Fire;
- Work/Food Strike;
- Disturbance (Internal);
- Unauthorized Absences/Missing Residents;
- Hostage Situations (Internal);
- Search Teams (Internal);
- Bomb Threat;
- Natural Disasters—Extreme Weather;
- Civil Disturbance;
- Environmental Hazard;
- Resident Transportation System Emergency;
- Evacuation;
- Nationwide Lockdown;
- Staff work stoppage;
- Active shooter; and
- Other Site-specific Plans.

**1. Fire**

The safety/maintenance supervisor will develop a comprehensive fire control plan, in accordance with the Fire Prevention and Control section in the ICE Family Residential Standard on *Environmental Health and Safety*.

The Security Manager or Center Administrator designee will develop a procedural outline for shift supervisors or Center Administrator designees to follow in the event that a fire occurs during non-duty hours.

**2. Work/Food Strike**

In cases of a food/hunger strike, Centers will comply with the requirements of the ICE Family Residential Standard on *Hunger Strikes*. The Center Administrator will determine the course of action to pursue, based on:

- Whether strikers have announced when the strike will end;
- Occurrence of or potential for violence;
- The number of residents involved; and

**1.1 Emergency Plans**

- Prospects for neutralizing the problem.

**3. Disturbance (Internal)**

After determining the course of action to pursue, the Center Administrator will direct staff to implement the action plan, which will cover at a minimum:

- Controlling utilities;
- Securing available emergency entrances (e.g., food service, living and activity areas);
- Notifying and assembling trained emergency responders/other staff and equipment;
- Dispensing chemical agents in specific areas;
- Maintaining perimeter security (including crowd, traffic, and media control);
- Shutting down resident telephone systems;
- Notifying outside agencies; and
- Removing controlled substances from the pharmacy area.

**4. Unauthorized Absences/Missing Residents**

Centers will develop plans to address incidents when residents are observed departing Center property or activities without authorization, or when residents are reported missing.

- Centers will conduct an emergency count in accordance with the ICE Family Residential Standard on *Resident Census*.
- If the resident is located as a result of the emergency count, then the Center Administrator will notify the JFRMU Onsite Coordinator.
- If the resident is not located as a result of the emergency count, then the Center Administrator will notify immediately onsite ICE/ERO management (as applicable), the respective FOD and JFRMU Onsite Coordinator, and JFRMU Chief.

**Additional Requirements Related to Missing Residents.** Staff will conduct a search of the Center and external Center grounds in accordance with the Search Teams (Internal) section in this standard.

Centers also will notify local/State law enforcement agencies for support.

If the missing resident is a minor, then Centers also will comply with local and State child welfare notification requirements.

Centers will keep onsite ICE/ERO management (as applicable), the respective FOD and JFRMU Onsite Coordinator, and JFRMU Chief apprised of the situation as it progresses.

**Notification to Authorities.** The Center Administrator will notify local, State, and Federal law enforcement officials immediately and ensure that the respective Field Office is notified immediately. Additional requirements for ICE/ERO are detailed in the 7/14/2006 memorandum from the ICE/ERO Director cited under References.

**1.1 Emergency Plans****5. Hostage Situations (Internal)**

**ICE/ERO Field Office Hostage Situation Management Plan.** The Field Office hostage situation management plan will make available the essential logistical support and local and/or backup resources (e.g., equipment, expertise, personnel) to any affected Center in the jurisdiction.

- The Field Office and Response Coordination Division jointly will provide designated Centers with well-trained and well-equipped HNTs.
- The plan will identify, for each Center, the backup personnel, mental health professionals, and others as needed during a prolonged crisis. The Field Office will maintain a list of all ICE/ERO hostage-negotiation trainers/consultants and trained negotiators in the jurisdiction.
- The FOD, in consultation with the Center Administrator, will ensure the availability of crisis support teams, consisting of trained counselors/therapists, to:
  - Provide post-crisis services to staff and families; and
  - Upon request, assist Centers to develop site-specific emergency plans for victims and their families.
- Centers will maintain a list of translator services and interpreters, in the event one is needed for hostage negotiations.

**Hostage Negotiation Teams (HNTs).** Each Center's core negotiation group (generally the team leader, primary negotiator, and mental health expert) will attend hostage negotiation training and be certified as hostage negotiators.

Requirements for the team leader include experience and skill applying hostage negotiation principles and strategies, demonstration of working effectively under stress, and proven leadership ability. The Center Administrator generally will select a department head as the team leader.

Negotiators must possess strong verbal/interpersonal skills, personal maturity, a commitment to negotiation as the key to conflict resolution, flexibility, and a history of working well under pressure.

The headquarters response coordination division will:

- Maintain a roster of ICE/ERO personnel who are trained in hostage negotiation and qualified and available for work on an HNT in any ICE/ERO Center; and
- Provide copies of the roster to the Field Offices and keep them updated.

HNT members will convene for no fewer than eight hours of duty time every month to plan and practice negotiation scenarios, and consult with other law enforcement agencies. To solidify working relations and complementary strategies and techniques/tactics, an SRT member will serve as team liaison and routinely attend the negotiation team's monthly sessions.

**1.1 Emergency Plans**

Whenever possible, the negotiation team will conduct annual joint training sessions with negotiators from other law enforcement agencies and maintain contact with counterparts in other agencies.

Training exercises integrating the activities of the command post, HNT, and SRT will occur every six months to underscore the importance of a total Center response to a hostage situation. As participants collaborate and interact, they will experience how other operational teams think and function, and will learn what each can contribute in a crisis.

Every negotiation team will have access to portable communication equipment or “throw phones.” To operate the equipment when needed in an emergency, team members will have access to the equipment for routine practice sessions. A communications equipment expert, thoroughly familiar with the operation of the throw phone, will be available to each negotiation team during practice exercises.

Each Center will maintain a list of translator services and interpreters, in the event one is needed for hostage negotiation.

Each Center also will make provisions for use of an electronic translator, such as a hand-held computer that translates spoken English phrases into other languages.

**Chain of Command in Hostage Situations.** The Center Administrator will ensure the FOD and JFRMU Chief are kept informed of every aspect of the crisis on a regular schedule until the crisis is resolved or until ICE/ERO assumes command and control of the incident. At his/her discretion, The ERO headquarters Field Operations Assistant Director may assume control of a large-scale operation involving coordination with other ICE/ERO components and law enforcement agencies, as necessary.

The Center Administrator will report a hostage situation immediately to the FOD, who will in turn notify the Field Operations Assistant Director and the JFRMU Chief. The Center Administrator will assign a senior manager to serve as liaison with the Field Office and Field Operations.

The Center Administrator will notify the FBI and other agencies, as appropriate, of the situation.

Under no circumstances may Centers cede command authority to external law enforcement agencies (such as the FBI) unless required in a signed MOU (or other formal agreement).

**Disturbance Containment and Center Security.** The Center Administrator will:

- Prevent movement into or out of the scene of the hostage area;
- Terminate resident telephone usage;
- Limit or curtail staff radio usage;
- Remove visitors and non-Center staff, including contract employees and volunteers;
- Recall residents for immediate official count;
- Remove residents from the hostage area. If in a living area, move the residents into temporary housing, in accordance with written, site-specific procedures; and

**1.1 Emergency Plans**

- Conduct staff roll call, in accordance with written procedures, to determine the number and identity of hostages. This roll call will include all persons (Center staff, medical staff, ICE/ERO (as appropriate), contractors, and volunteers) scheduled to be at the Center at the time of the incident.

**Negotiations.** ICE or its designee has sole authority to conduct hostage negotiations anytime an ICE staff or ICE resident is a hostage taker.

The Center Administrator will have no hands-on involvement in the negotiation process. Once the emergency response component has contained and stabilized the immediate situation, the trained HNT will take over.

Hostage negotiators act as intermediaries between the command post and the hostage takers, keeping the lines of communication with the hostage takers open and maintaining calm while working toward a nonviolent resolution.

The HNT will include:

- A team leader (manages negotiations; command post liaison);
- A primary negotiator (communicates directly with hostage takers);
- A secondary negotiator (advises/assists primary negotiator);
- A mental health professional (observes, provides psychological analyses/assessments and advice; monitors stress levels and emotional climate); and
- A note-taker (documents all communication to/from hostage takers).

Hostage negotiators will have no decision-making authority. Negotiators will maintain close contact with the decision makers and persons in charge of tactical assault teams by means of continuous briefings on the status of negotiations.

Certain issues, such as releasing hostage takers from custody, providing weapons, arranging hostage exchange, and immunity from prosecution are not open to negotiation.

Third-party participation in negotiations will be consultative only.

Unless formally involved in negotiations, staff will have no contact with hostage takers.

**Status of Certain Staff During and After a Hostage Situation.** Regardless of the individual's rank or authority under normal conditions, Center personnel will not be bound by instructions/orders/suggestions from any supervisor or other staff member who is a hostage.

A staff member with a relative or close associate among the hostages will be relieved from duty, responsibility, and authority pending resolution of the incident.

Emergency plans will specify procedures for screening freed hostages for medical and psychological problems.

ICE Health Services Corp (IHSC) or designated Employee Assistance Program (EAP) contact will coordinate and conduct the screenings and debriefings of all hostages and other employees involved in the disturbance.

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Hostages will receive psychological screenings within 48 hours of their release, to guide decisions about counseling/therapy and work reentry.

IHSC will advise the senior official in charge regarding any employees who may be unfit for duty.

The Center Administrator will ensure a debriefing with former hostages after their psychological and medical screenings, unless IHSC staff advises postponement.

Emergency plans also will provide for debriefing personnel not taken hostage, but significantly involved in the operation to free hostages. This debriefing should take place prior to the staff member being released from duty.

**Hostage Family Services.** The Center Administrator will notify hostages' families of the situation as early as possible.

If the hostage situation is not resolved quickly, then the FOD (or designee) will identify members of a crisis support team and direct them to establish a family service center at the Center.

The crisis support team will be distinct from the HNT. The two teams will have no members in common.

At the family service center, the crisis support team will provide members of affected families accurate information, updates, and breaking news and professional advice and help.

The crisis support team will address children's stress and stress-generated behavior directly. The EAP may assist with family stress management.

**Media.** News media organizations will abide by the policies and procedures of the Center. In accordance with the ICE Family Residential Standard on *News Media, Interviews, and Tours*, the ICE PAO or the staff member handling press releases and inquiries is responsible for:

- Designating an area where any media representatives present will not interfere with emergency operations;
- Arranging regular briefings; and
- Handling incoming inquiries.

**6. Search Teams (Internal)**

The Shift Supervisor or Center Administrator designee will serve as search coordinator, dispatching a separate two-staff member search team for every missing resident, at least one of whom will be thoroughly familiar with the assigned search area.

The supervisor will direct search teams to draw designated keys from the Center's key control area, specify which search method to use, instruct assigned teams to search areas identified to be searched, including areas with non-standard construction features (temporary or permanent), and assign a designated radio frequency.

**Equipment (at a minimum).** The following equipment will be used, including, but not limited

**1.1 Emergency Plans**

to:

- Master blueprint or schematic for search coordinator;
- Separate blueprints for each search area;
- Radios (one per team);
- Flashlights;
- Ladders;
- Tools as needed; and
- Cell phones and any other items deemed necessary for the emergency.

**7. Bomb Threat**

Centers will respond immediately upon receiving a bomb threat.

**Telephoned Threat.** The Center Administrator will develop a “script” for staff to follow upon receiving a telephoned bomb threat. The script will be available at every staff telephone for instant access. (“FBI Bomb Threat DATA Form,” DOJ 370)

The objective of the scripted questions is to secure the following information from and about the caller:

- Bomb location;
- Time set for detonation;
- Type of explosive;
- Caller’s affiliation/self-identification (credibility of threat); and
- Caller’s gender, accent, tone, and other characteristics.

**Mail Threat.** The Center Administrator will instruct staff to consider suspect any letter or package with:

- Oily/greasy stains/discoloration;
- An incorrect title/department for the addressee;
- The addressee’s name misspelled;
- Disproportionate weight relative to the size of the envelope or box; and/or
- No return address.

**Written Threat.** Upon receipt of a written threat, staff will treat the paper or other means of communication as they would any other criminal evidence, preventing unauthorized handling of the material and saving all material associated with the delivery (e.g., envelope, wrapping).

**In-person Threat.** Staff will elicit as much information as possible from the person who has delivered an in-person threat while other staff simultaneously contacts a supervisor.



**1.1 Emergency Plans**

The Shift Supervisor will notify immediately the Center Administrator, safety/maintenance staff, local fire department, other appropriate Center officials, and ICE/ERO of the threat.

**Searching for a Bomb.** When searching for a bomb following a perceived or confirmed threat, the Shift Supervisor or Center Administrator designee will notify the local fire department and hospital, in addition to the Security Manager or Center Administrator designee, Center Administrator, Safety/Maintenance Supervisor, and other appropriate Center officials.

Search teams will report any suspicious object immediately upon discovery. At least one member of each search team will know the assigned area well enough to spot changes (e.g., unusual objects, items moved from their normal locations).

If appropriate, the Center Administrator will order a power shutdown.

**If a Bomb Is Found**

- The search team will not attempt to move or deactivate the device;
- The Center Administrator or designee will order a power shutdown;
- Team members will keep as still as possible, and power off all radios, body alarms, cell phones, and any and all electronic equipment capable of emitting a radio frequency signal;
- To prevent accidental activation of the device, all communication traffic will cease;
- The Shift Supervisor or Center Administrator designee will notify the bomb-removal agency listed in the written procedures; and
- Security staff will clear and secure the surrounding area within the threat zone.

**After an Explosion.** The Safety/Maintenance Supervisor will implement appropriate precautionary measures, ensuring safe evacuation of the remaining occupants, in accordance with written procedures, that assume:

- Structural damage;
- Additional bomb(s); and
- Casualties/injuries.

An explosives expert from the Bureau of Alcohol, Tobacco, and Firearms, the FBI, the local fire chief, or other explosives expert will conduct the investigation.

**8. Natural Disasters—Extreme Weather**

After defining and mapping the interior- and perimeter-post areas, the Center Administrator will:

- Prepare a separate map showing locations of all interior posts;
- Establish and equip fog-patrol posts;
- Establish procedures and assign responsibility for ensuring equipment is available and in working order at all times;
- Ensure that perimeter security has been enhanced with additional staff;

**1.1 Emergency Plans**

- Remove objects and items that could become airborne and act as missiles during high winds;
- Ensure staff and residents are provided with appropriate necessary foul-weather gear;
- Ensure generators are functioning properly and have an adequate supply of fuel for a protracted situation;
- Ensure that if the Center is placed on lockdown status, then a briefing with staff occurs;
- Restrict resident activity and movement as appropriate;
- Ensure that if the Center is placed on recall status, then a staff briefing occurs; and
- Brief the residential population on the weather situation.

**9. Civil Disturbance**

**Scenarios.** The plan will address various civil disturbance scenarios including, at a minimum, the following:

- A single event (small/large);
- Several coordinated events at one or more locations, at once or at staggered multiple times;
- Type of event and individuals involved; and
- Involvement of other law enforcement agencies.

For each of several scenarios, the plan will specify procedures for multiple deployments involving the same and/or different kinds of equipment and teams, (e.g., in the event of simultaneous demonstrations).

**Basic Procedures.** The plan will specify procedures for standard activities, including but not limited to the following:

- Denying access to Center property (e.g., via barricades, roadblocks);
- Notifying/involving other law enforcement agencies;
- Establishing protest and/or holding areas;
- Marking unmarked property lines; and
- Providing medical care.

**10. Environmental Hazard**

**Safe Harbors.** The Center Administrator will identify and equip one or more safe harbor area(s) in the Center.

Designated areas will have the capacity to house a large number of residents safely and securely for two or three days, providing amenities such as a gym, auditorium, food service area, etc.

Every designated safe harbor will maintain supplies of, at a minimum, potable water, duct tape, plastic, and other items intended for use during an environmental hazard.

**1.1 Emergency Plans**

Every department (e.g., food service, medical, maintenance, recreation, administration) will have written procedures to operate in a safe harbor situation.

Centers will stock at least three days' worth of provisions for use in temporary quarters, with the objective to minimize disruption to daily routine, in accordance with the ICE Family Residential Standard on *Food Service*.

**Procedures for an Environmental Hazard.** The Center Administrator will designate a staff member to supervise a resident crew, which will seal off specified area(s) in a timely manner.

Staff and residents will receive necessary training as part of the Center's emergency-preparedness training program.

The plan will specify how often and where specialized training will occur.

The plan will specify the number of employees and residents to receive the training.

The Safety/Maintenance Supervisor will, if necessary, shut down ventilation units (e.g., cooling/heating systems, fans).

The Shift Supervisor or Center Administrator designee will direct the residents' orderly transfer to safe harbor areas.

At the safe harbor area, staff will conduct an emergency count, implementing the internal search plan if appropriate.

Staff will prohibit residents from taking personal property into safe harbor areas.

When the danger has passed, the Shift Supervisor or Center Administrator designee will direct the residents to return to their living areas, after which staff will conduct an emergency population count.

If environmental conditions worsen or fail to improve within an acceptable time frame, or the Center does not have a safe harbor area, then the Center Administrator will implement the Center's evacuation plan.

**11. Resident Transportation System Emergency**

If an emergency occurs while residents are being transported, then the Center Administrator will, upon request of transportation staff, provide any or all of the following:

- Vehicular escort;
- Personnel;
- Mechanical assistance;
- Medical assistance;
- Replacement transportation (if vehicle disabled);
- Notification to other law enforcement agencies; and/or
- Holdover lodging.

**1.1 Emergency Plans****12. Evacuation**

The Center Administrator will coordinate with the respective Field Office and JFRMU Onsite Coordinator for the temporary relocation of residents.

The Center Administrator will have emergency contracting authority during an officially approved evacuation. In the event of an emergency, community resources likely will be directed toward hospitals, nursing homes, schools, and other vital infrastructure and may not be available; therefore, it is recommended that Centers enter into contract negotiations with vendors within 75 to 100 miles to provide needed resources at an agreed-upon cost.

**Center Evacuation Plan.** The Center's plan will factor in all variables and combinations of variables that may precipitate or affect a mass evacuation, such as the following contingencies and their repercussions:

- Minimal warning/preparation time;
- Weather-related complications (e.g., tornadoes, hurricanes, blizzards);
- An area-wide disaster that would limit Center access to State and local emergency services (e.g., police, fire department, hospitals, military) and transportation providers; and
- Failure of at least 10 percent of staff to respond when recalled. [NOTE: The type and scope of the emergency will determine whether and by how much that percentage may increase.]

**Evacuation Scenario.** For every evacuation scenario, the plan will:

- Identify and prepare a list of suppliers to provide essential goods and materials during the emergency;
- Prepare an alternative list, identifying product substitutions and alternate suppliers; and
- Assign priorities among the essentials listed, recognizing shortages likely to occur during an area-wide emergency.

**Transportation and Supplies.** The Center Administrator will secure as many signed contracts, agreements, and commitments for transportation and supplies as needed in the event that Federal and other public-sector resources are unavailable.

**Pre-evacuation Procedures.** Time and circumstances permitting, the Center Administrator will implement the following pre-evacuation procedures:

- Enact emergency staff recall (time permitting);
- Implement procedures to retrieve/pack residents' personal property, central files, medical records, etc.;
- Implement department-by-department procedures to transport material needed to conduct daily operations at the temporary site (e.g., personnel files, blank rosters, forms);

**1.1 Emergency Plans**

- Deploy emergency equipment;
- Notify State and local authorities;
- Conduct (exit) emergency count upon departure and arrival; and
- Implement an internal search when appropriate.

**Center Shutdown.** To achieve a Center shutdown, the Center Administrator will:

- Verify resident count;
- Implement an internal search plan, as appropriate;
- Apply emergency utility controls; and
- Secure the site, to the extent possible.

**Transition to Temporary Site/Family Management.** To transition to a temporary site, in coordination with the Field Office and JFRMU Chief, the Center Administrator will:

- Confirm the previously projected number of vehicles needed for:
  - Residents;
  - Minors; and
  - Supplies.
- Record vehicle data, including number and source(s);
- Secure car seats and other items required to transport minors;
- Reconfirm security arrangements with other ICE/ERO components, the Bureau of Prisons, U.S. Marshals Service, local and State agencies, and the military;
- Separate residents in specialized housing before moving, individually or as a group, to another such unit or to a local Center equipped to accommodate the group's security and safety needs;
- Confirm staffing/assignments, including temporary duty arrangements;
- Provide a plan of action to accommodate the management of family units during emergencies; and
- Develop a response plan when family units are separated temporarily or permanently due to unexpected illness, evacuation, or unforeseen circumstances causing an unexpected and unavoidable separation of children and their parents/guardians.

**13. Nationwide Lockdown**

In the event of a compelling need to secure all ICE/ERO Centers, the respective FOD will instruct the Center Administrators to implement restrictive movement plans in their Center.

**Lockdown Procedures.** The Center Administrator will implement the following lockdown procedures:

**1.1 Emergency Plans**

- Perform emergency resident count;
- Conduct staff briefing (may include interim increase to 12-hour shifts);
- Suspend resident access to telephones and televisions;
- Suspend visitation (designated staff will attempt to contact individuals with visits planned; residents may notify interested persons of the lockdown and suspension of visits by mail);
- Provide meal service in living areas;
- Activate the command post;
- Contact specialized personnel and teams, as appropriate (SRTs, HNTs, etc.);
- Suspend off-site activities;
- Suspend visitation and volunteer programming. Staff will attempt to contact affected individuals. Residents also may notify interested persons of the lockdown and suspension of visits by mail;
- Suspend free movement and initiate staff secure movements within the Center; and
- Activate an incident command post as appropriate.

**Communication.** The Center Administrator will inform the residents, in writing, why the lockdown is necessary, what to expect, and how long it is likely to last. The Center Administrator will provide this resident notification as soon as possible after implementing the necessary procedures (as detailed in the preceding paragraph).

**Health Services.** Health services staff will make their regularly scheduled rounds.

**Termination of Lockdown.** When the nationwide lockdown is terminated, the Center Administrator will:

- Relax the lockdown systematically, according to written procedures; and
- Implement a lockdown recovery plan.

The plan will include slowly returning the Center to normal operating procedures by bringing small groups out at a time (e.g., one range of a pod in each living and activity area), feeding one range at a time, and then gradually increasing over a period of 48 hours. This gradual return affords staff the ability to assess the mood of the population accurately and take appropriate action.

**14. Staff Work Stoppage**

The Center will provide contingency operations in accordance with the Center's contractual obligations.

## References

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Environmental Health and Safety
- ICE Family Residential Standard on Food Service
- ICE Family Residential Standard on Hunger Strikes
- ICE Family Residential Standard on News Media, Interviews, and Tours
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Census
- ICE Family Residential Standard on Use of Physical Control Measures and Restraints
- “ERO Addendum to Interim ICE Firearms” memorandum to FODs from Wesley J. Lee, Acting ICE Director (July 11, 2005)
- ICE Interim Firearms Policy (July 7, 2004)
- ICE Interim Use of Force Policy (July 7, 2004)Memorandum dated 7/14/2006 on “Escape Reporting” from the ICE/ERO Director, which specifies requirements for the reporting, tracking, and investigating of the escape of an ICE/ERO resident



# 1.2 Environmental Health and Safety

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects residents, staff, volunteers, and contractors from injury and illness by maintaining high Center standards of cleanliness, sanitation, and safe work practices; and by controlling hazardous substances and equipment.

Various terms used in this standard may be defined in ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers will maintain high standards for cleanliness and sanitation.
2. Centers will comply with all applicable Federal, State, and local safety and sanitation laws and will document internal and external inspections, and corrective actions when indicated.
3. Centers will comply with all applicable fire safety codes and fire safety performance requirements, will develop evacuation plans, and will conduct safety drills.
4. Centers will comply with fire prevention regulations, inspection requirements, and other practices, including conducting periodic fire drills and ensuring the safety of residents, staff, and visitors.
5. Fire safety and other emergency equipment will be maintained in working condition.
6. Centers will control all flammable, poisonous, toxic, and caustic materials and use them in a safe manner and in accordance to the applicable Safety and Data Sheets (SDS).

## 1.2. Environmental Health and Safety

7. Centers will require staff to know emergency procedures and responsibilities, including those that require evacuation, in accordance with a written plan and with refresher training conducted at least annually.
8. Centers will have a written plan for the immediate release of residents from locked areas, and provisions for a back-up system.
9. Centers will mark distinctly and permanently a sufficient number of properly positioned emergency exits and keep them clear from obstruction.
10. Centers will perform preventive maintenance and regular inspections to ensure timely emergency repairs or replacement and to prevent dangerous and life-threatening situations.
11. Centers will sanitize all barbering equipment and supplies properly to minimize potential disease transfer.
12. Centers will control and eliminate pests and vermin.
13. Centers' potable water source will be safe.
14. Centers will maintain and periodically test emergency lighting and life-sustaining equipment.
15. Garbage and hazardous waste disposal will comply with applicable government regulations.
16. Centers will provide administrative controls (visual signs/aids) that are readily understood.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Environmental Health and Safety* dated 12/21/2007.

## Expected Practices

### A. Environmental Health and Safety

#### 1. General Environmental Health

Environmental health conditions will be maintained at a level that meets recognized standards of hygiene, including those from the:

- Occupational Safety and Health Administration (OSHA);
- Environmental Protection Agency (EPA);
- Food and Drug Administration (FDA);
- National Fire Protection Association's (NFPA) Life Safety Code; and
- Centers for Disease Control and Prevention (CDC).

The health services department or equivalent will assist in identifying and correcting conditions at the Center that could adversely impact the health of residents, employees, and visitors. The Center

## 1.2. Environmental Health and Safety

Administrator, or his or her designee for environmental health is responsible for developing and implementing policies, procedures, and guidelines for the environmental health program that are intended to identify and eliminate or control as necessary any potential sources of injury and modes of transmission of agents or vectors of communicable diseases.

The Center Administrator or his or her designee will:

- Conduct special safety investigations and comprehensive surveys of environmental health conditions; and
- Provide advisory, consultative, inspection, and training services regarding environmental health conditions.

The Health Services Administrator (HSA) or equivalent is responsible for:

- Implementing a program in the medical clinic that assists in maintaining a high level of environmental sanitation; and
- Providing recommendations to the Center Administrator or his or her designee concerning environmental health conditions.

## 2. Staff and Resident Safety

The Center Administrator or his or her designee will ensure that adequate provisions are made for staff and resident safety, in accordance with these standards and applicable laws.

The ICE Family Residential Standard on *Staff Training* further addresses employee training-related issues. The ICE Family Residential Standard on *Voluntary Work Program* addresses resident training issues for workers. Residents will receive safety instruction as necessary for living and activity area-related assignments, such as working with cleaning products to clean general use areas. General housekeeping is addressed in the ICE Family Residential Standard on *Housekeeping Program*.

Resident living and activity area safety will be emphasized to staff and residents by providing, as noted in these standards, a housekeeping plan.

Toys and related equipment will be included in the housekeeping plan and sanitized nightly. The Center Administrator or his or her environmental health designee will ensure proper standards are met for disinfecting toys, particularly with regard to chemicals used.

## 3. Pests and Vermin

The Center Administrator or his or her designee will contract with licensed pest-control professionals to perform monthly inspections to identify and eradicate rodents, insects, and other vermin. The contract will include a preventive spraying program for indigenous insects and a provision for callback services as necessary. Doors to the outside should be tight-fitting and door sweeps should be installed to prevent the entry of vermin from outside. Ventilation and other openings where vermin could enter should be covered with appropriate material to prevent such entry.

## **1.2. Environmental Health and Safety**

### **4. Certification of Center Water Supply**

The Center Administrator or his or her environmental health designee must ensure that at least annually, a State laboratory will test samples of drinking and wastewater to ensure compliance with applicable standards. A copy of the testing and safety certification will be maintained onsite.

### **5. Emergency Electrical Power Generator**

At least every two weeks, emergency power generators will be tested for one hour, and the oil, water, hoses, and belts of these generators will be inspected for mechanical readiness to perform in an emergency situation. An emergency power generator that performs self-analysis and load testing will be programmed to ensure the above referenced tests are completed at least once every two weeks for one hour, or in accordance with manufacturer's recommendations and instruction manual.

Technicians will check starting battery voltage, generator voltage, and amperage output at a minimum, and will perform all other necessary checks as well.

The emergency generator also will receive quarterly testing and servicing from an external generator service company (or otherwise in accordance with the manufacturer's instructions). Other emergency equipment and systems will be tested quarterly, and all necessary follow-up repairs or replacement will be performed as soon as feasible.

### **6. Garbage and Refuse**

Garbage and refuse includes all trash, rubbish, and other putrescible and non-putrescible solid waste, except the solid and liquid waste discharged into the Center's sanitary sewer system.

Garbage and refuse will be collected and removed from common areas, including the medical clinic, as often as necessary to maintain sanitary conditions and to avoid creating health hazards.

Centers will comply with all Federal, State, and local environmental regulations and requirements governing methods for handling and disposing of refuse.

## **B. Hazardous Materials**

Every Center will establish a system for storing, issuing, using, and maintaining inventories of and accountability for hazardous materials. The Center program will be supervised by the Center Administrator or his or her designee in accordance with OSHA standards. The effectiveness of any such system depends not only on written policies, procedures, and precautions, but also on adequate supervision and responsible behavior of staff and residents, including following instructions precisely, taking prescribed precautions, and using safety equipment properly.

A list of common flammable, toxic, and caustic substances is included at the end of this standard as Appendix 1.2.A: Common Flammable, Toxic, and Caustic Substances.

### **1. Staff and Resident Responsibility**

Every individual who uses a hazardous substance must:

- Be trained in accordance with OSHA standards, to include using SDS;
- Be knowledgeable about and follow all prescribed precautions;

## **1.2. Environmental Health and Safety**

- Be trained in using, donning, and doffing personal protective equipment prior to use;
- Wear personal protective equipment when indicated; and
- Promptly report hazards or spills to the designated authority.

### **2. Protective Equipment**

Protective eye, face, and other appropriate equipment (such as footwear, gloves, gowns, and/or aprons) is required where a reasonable probability of injury exists. Any person that uses personal protective equipment should receive training in using, donning, and doffing personal protective equipment prior to use. Areas of the Center where such injuries can occur will be marked conspicuously with hazard warning signs.

Eyewash stations will be installed in close proximity to where hazardous materials are used most often, in accordance with OSHA standards. Staff and residents using hazardous materials will be instructed in the eyewash station use.

### **3. Perpetual Inventories**

In each area of the Center where hazardous substances (e.g., flammable, toxic, or caustic) are used or stored, the Centers will maintain a current inventory of the substances used and stored there. Inventory records will be maintained separately for each substance. Entries for each substance will be logged on a separate card (or equivalent) and filed alphabetically by substance. The entries will contain relevant data, including purchase dates and quantities, use dates and quantities, and quantities on hand.

### **4. Safety Data Sheet Files**

Centers will maintain a file of SDS that includes a list of the current hazardous substance storage locations, along with a diagram and legend of these locations. Department heads will be responsible for maintaining a current SDS file for each hazardous substance used in their area.

SDS are produced by manufacturers and provide vital information on individual hazardous substances, including instructions on safe handling, storage, and disposal; prohibited interactions; etc.

Staff and residents will have ready and continuous access to the SDS for the substances with which they are working. Adult residents will use hazardous substances only under direct staff supervision. No resident under 18 years of age will be allowed to work with hazardous substances. Staff and residents who do not read English will not be authorized to work with these materials.

Because changes in SDS occur often and without notice, staff must:

- Review the latest issuance from the manufacturers of the relevant substances;
- Update the SDS files as necessary; and
- Forward any changes to the Maintenance Supervisor, so that the copy is kept current.

### **5. Master Index**

The Maintenance Supervisor or the Center Administrator's other designee will compile:

## 1.2. Environmental Health and Safety

- A master index of all hazardous substances in the Center and their locations;
- A master file of SDS; and
- A comprehensive, up-to-date list of emergency telephone numbers (fire department, poison control center, etc.).

The Maintenance Supervisor will maintain this information in the safety office (or equivalent) and ensure that a copy is sent to the local fire department.

### 6. General Guidelines Regarding Hazardous Substances

**Issuance.** Flammable, caustic, and toxic substances (hazardous substances) will be issued (i.e., drawn from supply points to canisters or dispensed) only under the supervision of the designated staff person.

**Amounts.** Hazardous substances will be issued in single-day increments (i.e., the amount needed for one day's work).

**Supervision.** Qualified staff will closely monitor residents working with hazardous substances.

**Accountability.** Inventory records for a hazardous substance must be kept current before, during, and after each use.

### 7. Flammable and Combustible Liquids

Any liquid or aerosol labeled "Flammable" or "Combustible" must be stored and used as prescribed on the label required by the Federal Hazardous Substances Act (FHSA).

Lighting fixtures and electrical equipment installed in flammable liquid storage rooms must meet National Electrical Code (NEC) or NFPA 70 requirements in hazardous locations.

Every hazardous material storage room will:

- Be of fire-resistant construction and properly secured;
- Have self-closing fire doors at each opening;
- Be constructed with either a four-inch sill or a four-inch depressed floor; and
- Have a ventilation system (mechanical or gravity flow) that provides at least six air changes per hour, within 12 inches of the floor.

Every storage cabinet will:

- Be constructed according to the applicable code and securely locked at all times;
- Be clear of open passageways, stairways, and other emergency exit areas;
- Be labeled conspicuously: "Flammable—Keep Fire Away"; and
- Contain no more than 60 gallons of Class I or Class II liquids, or no more than 120 gallons of Class III liquids.

Only authorized staff will have access to storage rooms and cabinets.

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Any portable container that is not the original shipping container must be designated as an approved safety canister, and must be listed or labeled by a nationally recognized testing laboratory. Each container will bear a legible label that identifies its contents.

Excess liquids will remain in original containers, tightly closed, in the storage room or cabinet.

The SDS will govern use of particular flammable or combustible liquids.

Only authorized staff may dispense flammable and combustible liquids, using acceptable methods for drawing from or transferring these liquids.

Drawing from or transferring any of these liquids into containers indoors is prohibited except:

- Through a closed piping system;
- From a safety can;
- By a device drawing through the top; or
- By gravity, through an approved self-closing system.

An approved grounding and bonding system must be used when liquids are dispensed from drums.

Without exception, cleaning liquids must have a flash point at or above 100 degrees Fahrenheit (e.g., Stoddard solvents, kerosene). Cleaning operations must be in an approved parts-cleaner or dip tank that is fitted with a fusible link lid with a 160-degree Fahrenheit melting-temperature link.

SDS directions will determine the disposal and spill procedures:

- When disposing of excess flammable or combustible liquids; or
- After a chemical spill.

### 8. Toxic and Caustic Substances

All toxic and caustic materials must be stored in secure areas, in their original containers, and with the manufacturer's label intact on each container.

Only authorized staff will draw/dispense these substances, in accordance with the applicable SDS.

Staff either will return unused amounts to the original container(s) or, under certain circumstances, to another suitable, clearly labeled container within the storage area.

SDS directions will determine the disposal and spill procedures for toxic and caustic materials used in the Center.

### 9. Poisonous Substances

Poisonous substances or chemicals (e.g., methyl alcohol, sulfuric acid, muriatic acid, caustic soda, or tannic acid) pose a very high (Class I) caustic hazard due to their toxicity.

**Methyl Alcohol.** Methyl alcohol, variously referred to as wood alcohol and methanol, commonly is found in industrial applications (e.g., shellac thinner, paint solvent, duplicating fluid, solvents for leather cements and dyes, flushing fluid for hydraulic brake systems).

- If ingested, methyl alcohol can cause permanent blindness or death.



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- Immediate medical attention is vital any time methyl alcohol poisoning is suspected.
- Staff must directly supervise the use of any product containing methyl alcohol. Products that contain methyl alcohol in highly diluted amounts (e.g., shoe dye) may be issued to residents, but only in the smallest workable quantities.

### **10. Other Toxic Substances**

Permanent antifreeze containing ethylene glycol will be stored in a locked area and dispensed only by authorized staff.

Fluids containing carbon tetrachloride or trichloroethane will be dispensed in small quantities and used under direct staff supervision and will be strictly controlled.

Residents will be permitted to use only nontoxic glues. Glues of every type may contain hazardous chemicals. Toxic glues must be stored in a locked location, for use only by authorized staff. When use of a nontoxic product is not possible, staff must supervise closely all stages of handling.

The use of dyes and cements for leather requires close supervision. Nonflammable types will be used whenever possible.

Resident use of ethyl alcohol, isopropyl alcohol, and other antiseptic products will be under direct staff supervision. To the extent practical, such chemicals will be diluted and issued in small quantities to prevent any injuries or lethal accumulation.

Pesticides not currently approved by EPA, such as DDT and 1080 (sodium fluoroacetate) are prohibited. The Maintenance Supervisor is responsible for purchasing, storing (in a locked area), and dispensing all pesticides used in the Center.

The Maintenance Supervisor or other staff members responsible for herbicides must hold a current State license as a certified private applicator. Persons applying herbicides must wear proper clothing and protective gear.

Lyes may be used only in dye solutions and only under the direct supervision of staff.

### **11. Labeling Chemicals, Solvents, and Other Hazardous Materials**

The Center Administrator or his or her designee will individually assign the following responsibilities associated with the labeling procedure:

- Identifying the nature of potentially hazardous materials adopted for use;
- Overseeing use of properly labeled containers for hazardous materials, including any and all miscellaneous containers into which employees might transfer materials;
- Instructing staff in the meaning of the classification code and the SDS, including the safe handling procedures for each material;
- Working with staff to ensure that containers are labeled properly; and
- Correctly labeling all smaller containers to correspond to the manufacturer-affixed labels on larger shipping containers.

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### 12. Controlled Hazardous Materials

Certain substances require special treatment and careful planning and precautions before use beyond attention to the warning label. These controlled materials are classified according to the type of hazard and the nature of the restrictions imposed for their safe use, as specified in OSHA regulations.

**Class I: Industrial Solvents.** Industrial solvents and chemicals used as paint thinners, degreasers, and cleaning agents may have toxic properties and low flash points, making them dangerous fire hazards.

**Class II: Restricted Materials.** Beryllium and its alloys and compounds, and silver solder containing cadmium pose a danger to workers, for whom special precautions must be taken.

**Class III: Recognized Carcinogens.** OSHA-listed carcinogens are governed by the OSHA regulations provided in 29 CFR 1910.1003-1910.1016.

Although asbestos appears on the OSHA list, it is exempt from the regulation when:

- No asbestos fibers will be released into the air during handling and use; and
- The asbestos consists of firmly bound fibers contained in a product such as a transit pipe, wallboard, or tile (except when being sawed or otherwise handled in a way that releases fibers into the air).

**Class IV: Suspected Carcinogenic, Teratogenic, and Mutagenic Materials.** Chemical agents, substances, mixtures, and exposures are listed in the biennial Report on Carcinogens issued by the National Institutes of Health, National Toxicology Program, in accordance with the U.S. Public Health Service Act. The chemical control staff will ensure that the Center has and complies with the provisions of the latest edition.

## C. Fire Prevention and Control

### 1. Fire Safety Codes

Every Center will comply with standards and regulations issued by:

- EPA;
- OSHA;
- Local and National Fire Codes (NFCs); and
- Applicable standards of the American Society for Testing and Materials (ASTM), American National Standards Institute (ANSI), and Underwriters' Laboratories (UL) or Factory Mutual Engineering Corporation.

New construction, alterations, and renovations will comply with:

- The latest revision or update of the International Code Council (ICC);
- The latest revision or update of the Building Officials and Code Administrators National Building Code (issued by Building Officials and Code Administrators International);
- The Uniform Building Code (UBC); or

## **1.2. Environmental Health and Safety**

- The Standard Building Code, in accordance with 40 U.S.C § 619 and local law.

If the local government does not mandate adherence to a particular code, then construction must conform to the International Council Codes.

In addition, construction will comply with the latest edition of the NFPA's 101, Life Safety Code and NFCs. If the fire protection and life safety requirements of a local building code differ from NFPA 101 or the NFCs, then the requirements of NFPA 101 and the NFCs will take precedence and be recognized as equivalent to those of the local building code.

### **2. Inspections**

Supervisors trained in fire safety will conduct weekly fire and safety inspections.

Safety staff will conduct monthly inspections. A medical staff member will serve either as a consultant or participant on the Center safety committee.

Written reports of the inspections will be forwarded to the Center Administrator or his or her designee for review and, if necessary, corrective action determinations. Designated staff will maintain inspection reports and records of corrective action in the safety office. Fire safety deficiencies will be addressed promptly.

### **3. Fire Prevention, Control, and Evacuation Plan**

Centers will develop a written fire prevention, control, and evacuation plan that includes the following:

- Control of ignition sources;
- Control of combustible and flammable fuel load sources;
- Provisions for occupant protection from fire and smoke;
- Inspection, testing, and maintenance of fire protection equipment, in accordance with NFPA codes, etc.;
- Monthly fire inspections;
- Fire protection equipment installed throughout the Center, in accordance with NFPA 101, Standard for Portable Fire Extinguishers;
- Accessible, current floor plans (including all buildings and rooms); prominently posted evacuation maps/plans; and exit signs and directional arrows for traffic flow, with a copy of each revision filed with the local fire department; and
- Exit diagrams that will be posted conspicuously throughout the Center.

### **4. Fire Drills**

Monthly fire drills will be conducted and documented.

Fire drills in living and activity areas, medical clinics, and other areas occupied or staffed during non-working hours will be timed so that employees on each shift participate in an annual drill.

Residents will be evacuated during fire drills, except:

## **1.2. Environmental Health and Safety**

- In areas where security would be jeopardized;
- In medical areas where patient health could be jeopardized; or
- In individual cases when evacuation of patients or residents is not logistically feasible.

Staff will simulate drills in areas where residents are not evacuated.

Emergency-key drills will be included in each fire drill, and timed. Emergency keys will be drawn and used by the appropriate staff to unlock one set of emergency exit doors not in daily use.

NFPA recommends a limit of 4-1/2 minutes for drawing keys and unlocking emergency doors. However, when conducting fire drills, emphasis will be placed on safe and orderly evacuation rather than speed.

### **5. Exit Diagram**

In addition to a general area diagram, the following information must be posted on emergency exit diagrams:

- Instructions in English, Spanish, and the next most prevalent language at the Center;
- “You are here” markers on exit maps;
- Emergency equipment locations; and
- Outdoor emergency assembly area.

“Areas of Safe Refuge” will be identified and explained on diagrams. Diagram posting will be in accordance with applicable fire safety regulations of the jurisdiction.

## **D. Medical Operation**

### **1. Needles and Other Sharp Objects**

A mandatory, uniform procedure will be established for the safe handling and disposal of used needles and other potentially sharp objects (sharps) to prevent both mechanical injury and the percutaneous transmission of infectious disease organisms, such as the hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

Sharps are defined as all disposable or discarded items derived from resident care that potentially could transmit disease via direct subdermal inoculation. Items included are hypodermic needles and syringes, scalpel blades, glass vials or ampules containing materials deemed to be infectious, burrs, glass cartridges, and lancets.

Accidental injuries from sharps are common in health care programs; most are from needle sticks caused by staff attempting to recap hypodermic needles. A uniform procedure for used needles and other disposable sharps is necessary to reduce the number of such injuries by preventing the secondary handling of needles and other dangerous sharps used in the delivery of health care.

### **2. Standard Precautions (includes “Universal Precautions”)**

Staff will routinely practice standard precautions. Staff will wash their hands frequently and take additional routine precautions to prevent contact with blood or other body fluids.

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Gloves, preferably non-powdered nitrile gloves, will be worn prior to touching blood and body fluids, mucous membranes, or non-intact skin of all patients; prior to handling items or surfaces soiled with blood or body fluids; and prior to performing venipuncture and other vascular access procedures.

Gloves will be changed after contact with each resident.

Masks and protective eyewear or face shields will be worn during procedures that are likely to generate droplets of blood or other body fluids, to prevent exposure of mucous membranes of the mouth, nose, or eyes.

Non-permeable gowns and/or aprons will be worn during procedures that are likely to generate splashes of blood or other body fluids.

Hands and other skin surfaces will be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands will be washed immediately after gloves are removed.

All health care workers will take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures, especially at the following times: when cleaning used instruments, during disposal of used needles, and when handling sharp instruments after procedures. Instruments and drugs will be maintained in a secure and sanitary condition.

To prevent needle-stick injuries, needles will not be recapped, purposely bent or broken, removed from disposable syringes, or otherwise manipulated by hand. After use, disposable syringes and needles, scalpel blades, and other sharp items will be placed in puncture-resistant containers for disposal.

Large-bore reusable needles will be placed in a puncture-resistant container for transport to the reprocessing area.

To minimize the need for emergency mouth-to-mouth resuscitation, mouthpieces, resuscitation bags, or other ventilation devices will be available for use in areas in which the need for resuscitation is foreseeable.

Health care workers who have exudative lesions or weeping dermatitis will refrain from all direct patient care and from handling patient care equipment until the condition resolves.

Pregnant health care workers will adhere strictly to precautions to minimize the risk to the fetus of perinatal transmission of HIV.

Isolation precautions will be used as necessary if associated conditions, such as infectious diarrhea or tuberculosis, are diagnosed or suspected.

Staff will encourage residents to wash their hands frequently and to take additional routine precautions to prevent contact with blood or other body fluids.

### **3. Accidental Needle Sticks**

Any employee or resident who receives a needle stick or who is cut while handling potentially contaminated sharps will be counseled regarding baseline testing for HBV and HIV, and referred to his/her usual source of health care. If the injury also involves a person who is a known source of possible infection, then that person also will be tested for HBV and HIV. The incident will be

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reported as an occupational injury and documented in accordance with OSHA Injury and Illness Recordkeeping and Reporting Requirements. Should the affected staff be a Federal employee, the incident also will be documented in accordance with current applicable policy, procedures, and regulations.

The leading health service provider's exposure-control plan will be followed in the event of a needle stick.

### 4. Perpetual Inventory

A perpetual inventory will be kept of medical items that pose a security risk, such as sharp instruments, syringes, needles, and medical scissors. The inventory will be audited weekly by the staff designated by the HSA or equivalent to ensure proper accounting.

### 5. Handling

Without removing the needles or replacing the needle covers, staff will place used (disposable) syringes in a plastic, puncture-resistant disposal box or container.

**Disposal Containers.** Use only commercially available, biohazardous-waste sharps containers approved by the National Institute of Safety and Health (e.g., a "Winfield Sharps Container").

Do not use milk cartons or plastic milk jugs or other plastic containers of similar thickness.

Use containers with a two-gallon capacity (approximate).

Under no circumstances will an item be removed from the sharps container.

**Location.** Sharps containers will be located on top of counters or, if on the wall, at least five feet above ground. Sharps containers will never sit on the floor.

**Disposal.** When the disposal box is one-half to two-thirds full, the lid will be closed and locked, and tape will be placed over the top of the lid to indicate that it is ready for disposal. The sharps container will be labeled with the words "infectious waste" or with the universal biohazard symbol, and placed in the proper area for removal and disposal.

Sharps are considered infectious waste, and final disposal of the sharps container and contents will be through a commercial contractor that handles disposal of infectious waste in accordance with all local and Federal regulations.

The HSA will make arrangements for disposal with an approved contractor and is responsible for validating that the contractor's disposal methods are in accordance with all infectious and hazardous waste disposal laws and regulations.

Arrangements will be made with local hospitals, when possible, for disposal with the hospitals' own infectious waste.

### 6. Environmental Health in Medical Operations

While many of the following considerations, precautions, and specific procedures apply to situations that typically arise in medical operations, in many cases they have general application to all Center operations.

## 1.2. Environmental Health and Safety

**General Housekeeping.** Environmental cleanliness will reduce, control, and prevent nosocomial infections due to contaminated environmental surfaces. The Center Administrator or his or her designee, in coordination with the HSA or designee, is responsible for ensuring the cleanliness of the medical unit.

The Center Administrator or his or her designee will develop a housekeeping plan that will include a daily, weekly, and monthly cleaning, disinfection, and inspection schedule using an acceptable health agency standard as a model. The medical unit housekeeping plan should address routine and terminal cleaning and disinfection of all areas, surfaces, and floors of the medical clinic, including, but not limited to, waiting areas, exam rooms, medical housing, and isolation rooms. The medical unit housekeeping plan shall establish:

- The cleaning equipment, cleansers, disinfectants, and detergents to be used;
- The methods of cleaning; and
- The frequency of cleaning and inspections.

The HSA or designee will make a daily visual inspection of the medical unit, noting the condition of floors, walls, windows, horizontal surfaces, and equipment. The HSA will report deficiencies to the Center Administrator or his or her designee).

All surfaces touched by residents or staff will be cleaned using fresh solutions of appropriate disinfectant products, applied with clean cloths, mops, or wipes. Cleaned surfaces need not be monitored microbiologically since the results of such tests have been shown not to correlate with infection risk. Floors, walls, beds, tables, and other surfaces that usually come in contact with intact skin require low-level disinfection.

Horizontal surfaces in resident care areas are cleaned on a regular basis, and when soiling or spills occur. Additionally, short-stay living and activity areas are cleaned daily and when a resident is discharged. Cleaning of walls, blinds, or curtains is required only when visibly soiled.

The Center Administrator (or designee) is responsible for training all staff and residents in using proper housekeeping procedures and proper handling of hazardous materials and chemicals.

### ***General Cleaning***

- All horizontal surfaces will be damp dusted daily with an approved germicidal solution.
- Windows, window frames, and windowsills will be cleaned on a regular schedule, but do not require daily cleaning.
- Furniture and fixtures will be cleaned daily.
- Floors will be mopped daily and when soiled using the double bucket mopping technique. The cleaning solution will be a hospital disinfectant-detergent solution mixed according to the manufacturer's directions. A clean mop head will be used each time the floors are mopped.



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- Waste containers will weigh less than 50 lbs., be nonporous, and be lined with plastic bags. The liner will be changed daily
- The container itself will be washed at least weekly, or as needed when it becomes soiled.
- Cubicle curtains will be laundered monthly or during terminal cleaning following treatment of an infectious patient.

***Isolation Cleaning.*** In Centers with medical housing beds, including isolation rooms, medical housing rooms should be cleaned and disinfected at least daily. The following will be adhered to after each use:

- An approved germicidal detergent solution will be prepared freshly in accordance with the manufacturer's specifications for each cleaning;
- After cleaning the isolation room, mops and cleaning cloths will be laundered before being reused;
- Dirty water and used disinfecting solutions will be discarded and the buckets and basins disinfected before being refilled. Items used in cleaning a contaminated isolation room will never be taken into another area;
- Linens will be removed from the bed carefully and double-bagged for transport; and
- All waste materials will be double-bagged and disposed of as contaminated waste.

### ***Terminal Cleaning***

- Every item in the room must be cleaned with an approved hospital germicidal solution.
- When applicable, linen will be stripped from the bed, with care taken not to shake the linen. Linen will be folded away from the person and folded inward into a bundle, then removed with minimal agitation.
- When applicable, all reusable receptacles (e.g., drainage bottles, urinals, bedpans, water pitchers) will be emptied and rinsed with germicidal solutions.
- All equipment that is not to be discarded (e.g., IV poles, respirators, suction machines) will be washed with an approved germicidal solution following manufacturer's guidelines for cleaning the specific piece of equipment.
- When applicable, mattresses and pillows covered with durable plastic covers will be washed thoroughly with the approved germicidal solution.
- When applicable, beds will be washed thoroughly, using a small brush soaked in germicidal solution to gain access to small holes and crevices, to areas between the springs, and to the casters.
- All furniture will be washed with a germicidal detergent solution. Use a small brush if necessary. Outside and underside as well as legs and casters also must be washed.

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- Wastebaskets will be washed thoroughly with a germicidal solution after trash and liner have been removed.
- Telephones will be cleaned thoroughly with a clean cloth soaked in the germicidal solution. The earpiece and mouthpiece will be unscrewed, scrubbed, dried, and replaced.
- Walls and ceilings need not be washed entirely, but areas that are soiled will be washed with germicidal solution.

### ***Choosing Disinfecting Materials***

- Hospital-grade disinfectant detergent formulations registered by EPA may be used for environmental surface cleaning, but the physical removal of microorganisms by scrubbing is as imperative as any antimicrobial effect of the cleaning agent used.
- Cost, safety, and acceptance by staff will be the criteria for selecting any such registered agent. The manufacturer's instructions for use will be followed exactly.

**Blood and Body Fluid Cleanup.** Spills of blood and body fluids will be cleaned up and the surface decontaminated in such a manner as to minimize the possibility of workers becoming exposed to infectious organisms, including HIV and HBV. A suitable cleanup kit will be maintained for use in cases of spills of blood and body fluids.

Cleanup kits may be obtained from commercial sources, or may be compiled by health services department staff, or the Center safety manager.

***Compiling a Cleanup Kit.*** To prepare a cleanup kit for blood and body fluid spills, package the following materials in a 12 x 15-inch clear zip-locked bag:

- Gloves, rubber or vinyl, household-type (2 pair);
- Clean absorbent rags (4);
- Absorbent paper towels (15);
- Disposable bag marked "Contaminated" size 23x10x39 inches, minimum thickness 1.5 millimeters;
- Clear plastic bag 13x10x39 inches, minimum thickness 1.5 millimeters; and
- Bottle of "hospital disinfectant" (containing quaternary ammonium chlorides in at least 0.8-percent dilution), or a bottle of household bleach such as "Clorox" or "Purex" (5.25-percent sodium hypochlorite).

### ***Using a Cleanup Kit***

- Open the bag and remove the supplies.
- Put on one pair of gloves.
- Depending on the type of disinfectant in the kit, take out the bottle of "hospital disinfectant," or prepare a dilute solution of sodium hypochlorite. To prepare a 1:10

## **1.2. Environmental Health and Safety**

- dilution of 5.25-percent sodium hypochlorite, mix 1 part of 5.25-percent sodium hypochlorite (common household bleach) with 10 parts water.
- Open the large clear plastic bag and the large bag marked “Contaminated.” Place them next to each other.
  - Use paper towels to absorb as much of the spilled fluid as possible; then place soiled paper towels in the large clear plastic bag.
  - Pour the solution carefully onto the spill area. Dispose of the empty bottle in the large clear plastic bag. Leave disinfectant in place for 15 minutes.
  - Use the rags to clean the area, and place rags in the large clear plastic bag.
  - Tie off the clear plastic bag and place it inside the large plastic bag marked “Contaminated.”
  - Remove gloves carefully and place them in the plastic bag marked “Contaminated.”
  - Put on the second pair of gloves and tie the “Contaminated” trash bag closed.
  - Properly dispose of the “Contaminated” trash bag in a contaminated-waste receptacle.
  - Properly dispose of the second pair of gloves in the contaminated-waste receptacle.
  - Wash your hands.
  - Prepare a new cleanup kit.
  - NOTE: Do not place linen or non-disposable articles in the “Contaminated” trash bag.

### ***Selecting Disinfectants***

- Dilute solutions of sodium hypochlorite are reported extremely effective against both HIV and HBV and, therefore, have been recommended for use in environmental decontamination procedures. Quaternary ammonium compounds are less effective against HBV. Chlorine in solution inactivates viruses quickly and efficiently, but must reach the virus particles to do so.
- Proteinaceous materials may interfere with the ability of the appropriate disinfectant solution to reach the virus particles. Since quaternary disinfecting compounds may act as a detergent as well as a disinfectant, these compounds may be used for cleaning and removal of proteinaceous materials from surfaces. However, when using such a compound to clean a surface, it will be necessary to follow with the use of chlorine solution for final disinfection.
- Most blood or body fluids will be removed from the surface during routine medical cleaning procedures before application of the disinfectant; in such cases, use of sodium hypochlorite solution will be sufficient.

## 1.2. Environmental Health and Safety

### ***Selecting Gloves***

- Household or industrial rubber gloves are recommended for use rather than surgical rubber gloves, as surgical gloves are somewhat porous and are less resistant to mechanical damage and punctures during cleanup procedures.

**Assigning Cleaning Duties to Residents in Medical Centers.** Resident workers may be assigned duties cleaning the medical unit. Residents are permitted to clean floors and walls and to remove trash, but are not permitted to clean medical equipment.

**Hazardous and Infectious Waste Disposal.** Infectious and hazardous waste generated at a medical unit will be stored and disposed of safely and in accordance with all applicable Federal and State regulations. The HSA will develop procedures regarding hazardous or infectious waste sanitation. The Center Administrator or his or her designee is responsible for incorporating these procedures into the Center housekeeping plan.

For identified wastes that represent sufficient risk of causing infection or injury during handling and disposal, the following precautions will be applied.

### ***Definitions***

- Hazardous or infectious waste is defined as: microbiology laboratory waste; human blood and blood products; sharps (as defined in the Medical Operation and Environmental Health in Medical Operations sections in this standard); laboratory and other chemicals; or certain drugs such as antineoplastic.
- Miscellaneous biomedical waste is defined as waste materials that are not defined specifically as infectious waste.
- Such waste includes bandages, dressings, casts, catheters, and disposable pads.
- Waste from residents in isolation is not considered to be infectious waste unless it falls within the specific definition of infectious waste as stated above.

**Collection and Storage.** Infectious waste must be separated from the general waste stream and clearly labeled as infectious, adhering to the following practices:

- Infectious waste will be double-bagged, tied, and labeled “Infectious Waste.”
- The bags used must be impermeable, commercially supplied red bags intended specifically for biohazardous waste storage.
- Miscellaneous biomedical waste will be double-bagged and tied but need not be labeled as infectious.

### ***Treatment and Disposal***

- Infectious fluids, such as blood products and designated body fluids, will be poured slowly and carefully down a toilet to prevent splash. Compacting of untreated infectious waste is prohibited. The waste disposal contractor must meet all State and local requirements for transportation and disposal.

## 1.2. Environmental Health and Safety

### E. Barber Operations

Sanitation in barber operations is imperative because of the possible transfer of diseases through direct contact or by towels, combs, and clippers. Towels will not be reused by other residents until sanitized. Instruments such as combs, clippers, and scissors will not be used successively on residents without proper cleaning and disinfecting.

For sanitation reasons, it is preferable that barbering operations be located in a room that is not used for any other purpose. The room must have sufficient light, and be supplied with hot and cold running water. The floors, walls, and ceilings will be smooth, nonabsorbent, and easily cleaned.

Each barbershop will have all equipment and facilities necessary for maintaining sanitary procedures for hair care, including covered metal containers for waste, disinfectants, dispensable headrest covers, laundered towels, and haircloths.

After each resident visit, all hair care tools that came in contact with the resident will be cleaned and disinfected effectively. Ultraviolet lights are not appropriate for sterilization but may be used for maintaining tools that have already been sterilized properly.

Detailed hair care sanitation regulations will be posted conspicuously in each barbershop for the use of all hair care personnel and residents.

Cotton pads, absorbent cotton, and other single or dispensable toilet articles may not be reused, and will be placed in a proper waste receptacle immediately after use. The common use of brushes, neck dusters, shaving mugs, and shaving brushes is prohibited.

Barbers or beauticians will not provide service to any resident when the skin of the resident's face, neck, or scalp is inflamed, or when there is scaling, pus, or other skin eruptions, unless service of such resident is performed in accordance with the specific authorization of the clinical medical authority. No person who is infested with head lice will be served and will be referred for health care as appropriate.

### F. Food Service

Centers will maintain environmental standards in food service areas in accordance with the ICE Family Residential Standard on *Food Service*.

## References

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Food Service
- ICE Family Residential Standard on Housekeeping
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Disability Identification, Assessment, and Accommodation.
- ICE Family Residential Standard on Staff Training

## **1.2. Environmental Health and Safety**

- ICE Family Residential Standard on Voluntary Work Program
- NFPA Standards
- Occupational Safety and Health Administration (OSHA) Regulations
- U.S. Public Health Service Report on Carcinogens

**1.2. Environmental Health and Safety**

# Appendix 1.2.A: Common Flammable, Toxic, and Caustic Substances

## Class I Liquids

Gasoline

Benzene (petroleum ether)

Acetone

Hexane

Lacquer

Lacquer thinner

Denatured alcohol

Ethyl alcohol

Xylene (Xylol)

Contact cement (flammable)

Toudi (Toluene)

Methyl ethyl ether

Methyl ethyl ketone

Naphtha Y, M, and P

## Class II Liquids

Diesel fuel

Motor fuel

Kerosene

Cleaning solvents

Mineral spirits

Agitene

## Class III Liquids

Paint (oil base)

Linseed oil



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Mineral oil

Neat's-foot oil

Sunray conditioner

Guardian fluid

**Toxic Substances**

Ammonia

Chlorine

Antifreeze

Duplicating fluid

Methyl alcohol

Defoliants

Herbicides

Pesticides

**Caustic Substances**

Lye

Muriatic acid

Caustic soda

Sulfuric acid

Tannic acid

# 1.3 Transportation (by Land)

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard prevents harm to the general public, residents, and staff by ensuring that vehicles used for transporting residents are equipped, maintained, and operated properly and that residents are transported in a secure, safe, and humane manner, under the supervision of trained and experienced staff.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. The general public, residents, and staff will be protected from harm when residents are transported.
2. Vehicles used for transporting residents will be equipped, maintained, and operated properly. This includes equipment appropriate and necessary to transport residents with disabilities and special needs, as well as minors requiring child safety seats.
3. Residents will be transported in a safe and humane manner, under the supervision of trained and experienced staff.
4. Except in emergency situations, one staff person may not transport a single resident of the opposite gender.

### 1.3 Transportation (by Land)

5. Reasonable accommodations will be made for residents with physical disabilities and/or special needs in accordance with security and safety needs and all applicable laws and regulations.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Transportation (by Land)* dated 12/21/2007.

## Expected Practices

### A. Written Policy and Procedures Required

The Center Administrator will develop and implement written policy, procedures, and guidelines for the transportation of residents, including, at a minimum:

- General policy and procedures governing safety, security, operations, communications, and equipment;
- Staff supervision of residents during transports;
- Vehicle inspections and repair;
- Vehicle occupancy;
- Resident vehicle seating arrangements;
- Transportation of minors to include State and Federal requirements that relate to transporting minors, including car seats, etc.; and
- Procedures and necessary equipment in the event of:
  - Vehicle failure;
  - Traffic accident;
  - Severe weather or natural disaster;
  - An emergency situation (as specified in the Emergency Situations section in this standard);
  - Transport of women; and
  - Transport of residents whose physical or mental conditions preclude prolonged travel.

### B. Vehicle Inspection

All vehicles used for transporting ICE/Enforcement and Removal Operations (ERO) residents will comply with annual safety inspections requirements in accordance with applicable federal, state, and local requirements/laws. Vehicles will be in serviceable and safe working order and will not be used for resident transportation if any safety repairs are needed. Vehicles equipped with

### 1.3 Transportation (by Land)

specialized gear for the transportation of residents with physical disabilities also must undergo appropriate inspections and maintenance to ensure the equipment remains in good order.

#### C. Transportation Planning and Scheduling

The Field Office Director (FOD) has overall responsibility for all aspects of vehicle operations.

The Center Administrator (or designee) will approve all resident transportation plans, including setting schedules and monitoring vehicular maintenance, making logistical arrangements to transport residents, supervising and instructing personnel, and protecting resident security. Before departure, the plans will be revised as necessary, based on weather and road conditions and any other relevant considerations.

#### D. Transporting Staff Responsibilities

##### 1. Training Required

To be assigned to drive a bus transporting residents, staff must have completed all required ICE/ERO training in accordance with the ICE Family Residential Standard on *Staff Training* and met all local State requirements for a commercial driver's license (CDL). In addition, the driver must have the appropriate State-issued CDL.

Bus driver trainees may operate the vehicle during any segment of a run when residents are not on board, but only under the direct supervision of a certified bus instructor licensed by the state in which they reside.

##### 2. Forms and Files

For each vehicle operator and other employees assigned to bus transportation duties, supervisors will maintain at the official duty station a file containing:

- Certificate of completion from a bus training program, as applicable; and
- Copy of the CDL.

Every motor vehicle operator will complete the following forms (or equivalents) for his/her official personnel folder (OPF): SF-47, G-392, and G-294. Every motor vehicle operator also is responsible for renewing these documents as necessary, and for providing to the OPF copies of all renewals and other changes/updates.

##### 3. Vehicle Operations

The driver will operate the vehicle in accordance with the CDL manual or the highest prevailing standard and must maintain complete control of the vehicle at all times.

Driving under the influence of drugs or alcohol is prohibited. In addition to any other random testing as part of a drug-free workplace program, all staff assigned to transportation are subject to the U.S. Department of Transportation (DOT) Drug & Alcohol Testing Program.

The transporting staff will comply with all State and Federal motor vehicle regulations (including DOT, Interstate Commerce Commission, and Environmental Protection Agency), including, but not limited to:

### **1.3 Transportation (by Land)**

- Wearing a seat belt when the vehicle is moving;
- Holding a valid, current driver's license from the state where domiciled and appropriate to the vehicle being driven (i.e., holding a valid state-issued CDL);
- Inspecting the vehicle prior to use, using a checklist, and noting any defect that may render the vehicle unsafe or inoperable;
- Transporting residents in a safe and humane manner;
- Driving defensively, taking care to protect the vehicle and occupants, obeying traffic laws, and reporting damage or accidents immediately;
- Verifying individual identities and checking documentation when transferring or receiving residents;
- Re-inspecting the vehicle after each trip and completing a vehicle inspection report, including an odometer reading at the beginning and end of each trip;
- Notifying a supervisor when limitations arise that affect their ability to safely operate the vehicle. These limitations may include driving skills, personal distractions, use of medications, or environmental conditions;
- Reading instructions and clearly understanding the purpose of the transportation;
- Discussing emergency and alternate plans with a supervisor;
- Not transporting any personal items other than those needed to carry out assigned duties during a trip;
- Returning the vehicle keys to the office or supervisor, according to Center procedures;
- Recording authorized expenses (e.g., fuel, emergency services, oil) on Form G-205 (or equivalent), specifying the exact amount and the date, and keeping all receipts and submitting them along with the appropriate form at the end of each month; and
- Safeguarding credit cards assigned to the vehicle.

#### **4. Driving Hours and Number of Operators**

All staff must recognize the limitations imposed by his/her own driving skills, personal distractions, and environmental conditions, and must modify his/her driving accordingly. The following rules apply to all transportation staff, whether driving or not, and it is the staff person's responsibility to inform a transportation supervisor if he/she is unable to make a trip because of these rules:

- CDL is required for each staff member assigned to bus operations;
- While operating a vehicle requiring a CDL, drivers must comply with all rules and regulations pertaining to CDL operations;
- Drivers must be off-duty for the eight hours immediately before any trip or trip segment;
- Maximum driving time (i.e., time on the road) is governed by DOT;

### **1.3 Transportation (by Land)**

- In an emergency or under unforeseen and adverse driving conditions only, the transportation staff may drive as long as necessary to reach a safe and secure stopping area; and
- When vehicles without residents travel in tandem, a single staff member may be assigned to each; unaccompanied staff also may drive empty vehicles for certain purposes, such as maintenance trips.

#### **5. Vehicle Security**

Staff will lock a vehicle before leaving it unattended, including removing keys from the ignition immediately upon parking the vehicle.

Staff will avoid parking in a spot where the vehicle may attract undue attention or be vulnerable to vandalism. If staff cannot locate a parking area with adequate security, then they will contact the local law enforcement agency for advice or permission to use one of its parking places.

#### **E. Transportation Staff Uniform and Equipment**

Transporting staff will wear attire in accordance with established procedures. Certain transportation details may require wearing street or business attire; the Center Administrator will establish a dress code for such occasions.

#### **F. Pre-departure Vehicle and Security Check**

Prior to a trip's departure, transportation staff will complete a thorough vehicle and security inspection, which includes:

- Inspecting the vehicle for mechanical and electrical problems;
- Taking any necessary special precautionary measures for transporting a resident identified as a special-handling case (e.g., for reasons of security, medical, physical, psychological problems, and/or transporting minors) while the search is in progress;
- Testing the emergency exits and testing the key for every lock located in or on the vehicle. A complete set of these keys will travel with the vehicle at all times, in a secure place known to every transporting staff member;
- Searching the vehicle and staging area for contraband before every trip, including the driver's compartment and glove compartment, the resident seating area, and the cargo compartment; and
- Inspecting special equipment for transporting residents with disabilities to ensure proper functioning.

#### **G. Required Documents**

##### **1. Transport Documentation**

No resident may be transported to/from any Center, including Field Office areas, unless a Form G-391, I-216, or I-203 (or equivalents), is furnished, authorizing the discharge. These forms (or equivalents) must be properly signed and will clearly indicate the name of the resident(s), the place

### 1.3 Transportation (by Land)

or places to be escorted, the purpose of the trip, and other information necessary to carry out the trip efficiently.

All completed G-391 forms (or equivalents) will be filed in order by month, with the previous month's forms readily available for review, and will be retained for a minimum of three years.

#### 2. Documents That Accompany the Resident

The ICE Family Residential Standard on *Resident Transfers* explains the files and documents that must be prepared and organized in preparation for a resident's transfer. ICE/ERO staff of the sending Center is required to complete a Resident Transfer Checklist to ensure all procedures are completed and place a copy in the resident's alien file (A-file) or work folder.

The ICE Family Residential Standard on *Health Care* lists the required documents and procedures to follow when a resident is transferred within the ICE Health Services Corps system.

Transportation staff may not transport a resident without the documents as required by the ICE Family Residential Standard on *Resident Transfers*. Staff is responsible for delivering all required medical documents and the transfer summary to personnel at the receiving Center.

To ensure that the receiving Center also receives the resident's files and other required documentation:

- Transportation staff may not accept a resident without the required documents;
- The receiving Center may refuse to accept a resident without the required documents; and
- The receiving Center must report any exceptions to the Field Office and the Deputy Assistant Director of the Detention Management Division.

#### H. Departure Scheduling and Security

The transportation staff will organize driving time so residents arrive at the designated meeting area on schedule.

Before transferring residents from one Center to another, a designated staff member will inform the receiving Center of:

- The estimated times of departure and arrival (ETD/ETA);
- The number of residents in each of the following categories:
  - New arrivals (remaining at the Center);
  - Drop-offs; and
  - Overnights.
- The total number of residents;
- Any special-handling cases, with details about the special requirements (e.g., medications, restraints, special equipment); and
- Any actual or estimated delays in departure, and the accordingly revised ETA(s).



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#### I. Transfer of Funds, Valuables, and Personal Property

In accordance with the ICE Family Residential Standard on *Admission and Release* and the ICE Family Residential Standard on *Funds and Personal Property*, Center staff will inspect and inventory the personal property of residents transferring from one Center to another.

In addition, at the originating Center:

- Staff will ask each resident whether he/she has in his/her possession all funds, valuables, and other personal property listed on the “Property Inventory” form or its equivalent:
  - If a resident answers “yes,” then he/she may board the vehicle; or
  - If a resident claims missing funds, valuables, or personal property, then the resident will remain at the Center until required paperwork is completed. Photocopies of completed forms are sufficient documentation for the transfer to proceed.
- Staff will include, in the “checked baggage” section on each I-216, the I-77 numbers to be verified by receiving Center staff; and
- The lead driver will check the manifest against the number of packages by resident name and alien number (A-number) before signing the I-216 or placing the baggage on the bus.

In addition to the requirements of ICE Family Residential Standard on *Funds and Personal Property*:

- Staff will complete a separate I-77 for each piece of baggage, and will record the resident’s name on the top, middle, and bottom portions; and
- Staff will enact the following procedure for each piece of baggage and corresponding I-77 form (or equivalent), and:
  - Attach the string on the top of the I-77 to the corresponding piece of baggage, and secure the resident’s signature on the back of the form;
  - Attach the middle section to the copy of the I-385 that will accompany the resident to the final destination; and
  - Provide the bottom portion to the resident as a receipt.

#### J. Vehicle Loading

##### 1. Security and Occupancy

Staff will supervise residents as they enter or exit a vehicle. The Center Administrator will ensure that all vehicles are assigned an occupancy rating in compliance with DOT. The number of residents transported may not exceed the established occupancy level.

The escorting staff/assistant driver will instruct the residents about rules of conduct during the trip in a language or manner that they understand.

All residents, particularly minors and residents with special needs, will be transported safely in accordance with State vehicular laws, (i.e., car seats, seat belts, etc.).

### **1.3 Transportation (by Land)**

#### **2. Items Residents May Keep in Their Possession**

Ordinarily, residents in transport may keep the following in their possession: jewelry (wedding rings and approved religious items), eyeglasses, and receipts for property and money (G-589, I-77). However, if the transporting staff determines that any of these items may compromise staff or resident safety, then the items will be removed from the resident's possession and placed in an appropriate storage area, and returned to the resident at the conclusion of the trip.

In some instances, the transportation staff will safeguard and dispense prescription medicines as prescribed, noting the resident's name, A-number, date and time(s) dispensed, and by whom. Such notes will be attached to the resident's medical record or A-file.

#### **3. Count, Identification, and Seating**

Prior to boarding, the transportation staff will make a positive identification of the residents they are transporting:

- Staff will compare each name with a trip-specific roster;
- Staff will conduct a visual count once all passengers are seated on board, and, every time the vehicle makes a scheduled or unscheduled stop, will conduct another visual count before resuming the trip;
- To transport disabled residents safely and securely, transportation staff will make reasonable accommodations for them, in so far as is practicable;
- Staff will assist residents with disabilities and special needs to their designated seat and ensure women and minors are seated according to the directives specified in the Transporting Women and Minors section in this standard; and
- Staff will ensure that minors are seated using proper safety devices.

### **K. Responsibilities En Route**

#### **1. Point of Contact**

The next receiving Center on the vehicle route serves as the contact point and is responsible for monitoring the vehicle's schedule.

Upon making contact with an arriving vehicle, the receiving staff will take custody of the specified residents by signing the accompanying Form I-216 (or equivalent).

Each Center will develop and post written guidelines for tracing procedures to locate an overdue vehicle. If the vehicle does not arrive within range of the ETA, then the contact point will set the tracing procedures in motion.

#### **2. Safety and Security**

For safety purposes, all occupants will remain seated while the vehicle is in motion.

Staff must maintain a clear view of the entire vehicle compartment and remain alert for behavior that could jeopardize safety and security.

### **1.3 Transportation (by Land)**

Residents will not have access to any personal baggage or packages while in transit (except as specified in the Items Residents May Keep in Their Possession section in this standard).

A complete set of keys for every lock located in or on the vehicle will travel with the vehicle at all times, in a secure place known to every transporting staff person, and staff will keep bolt cutters in the forward compartment with the outer equipment for use in an emergency.

Armed staff may not enter the secure area of the vehicle.

#### **3. Stops During Transit**

During stops, which the transportation staff will keep to a minimum, residents will not leave the vehicle until the transporting staff has secured the area. When residents disembark, staff will keep them under constant observation to prevent external contact(s) and/or contraband smuggling or exchange. The transportation staff will not leave residents unaccompanied in a vehicle.

#### **L. Meals**

The transportation staff will provide meals and snacks during all transports. Special considerations will be given to minors, pregnant residents, and residents who have medical conditions.

Meal times, the number of meals, and the types of meals provided will be recorded. Staff also will record and document the identifying information of any resident who refuses a meal.

The requirements specified in the ICE Family Residential Standard on *Food Service* apply equally to food served in transit and in Centers.

Transporting staff will observe safe food handling procedures at all times.

In transit, staff will store and serve food at the required temperatures. The crew will maintain a constant supply of drinking water and ice in the water container(s), along with paper cups. A small number of disposable garbage receptacles (i.e., plastic bags) will be kept in the driver's compartment, with the remainder stored in the equipment box located in the forward baggage compartment.

The Food Service Administrator will monitor the condition and routine cleansing and sterilizing of drinking-water containers, basins, latrines, etc. as appropriate, in vehicles to ensure compliance with the ICE Family Residential Standard on *Food Service*.

In an emergency, the transporting staff may purchase meals from a commercial source, obtaining receipts for later reimbursement.

#### **M. Vehicle Communication**

Every vehicle will be equipped with a functioning two-way radio. Staff also will carry at least one portable radio, so that staff can maintain contact if one or more must leave the vehicle. The vehicle's communications system also will include a cellular phone for use when radio communications are degraded (e.g., in dead zones, on different frequencies) and to enable them to communicate with the Center and local law enforcement.

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#### **N. Vehicle Sanitation**

Vehicles must be kept clean and sanitary at all times. The Center Administrator will establish the procedures and schedule for sanitizing Center vehicles. Transportation staff responsibilities include, but are not limited to:

- Dumping septic tank contents at the locations specified; and
- Maintaining an adequate supply of water and chemicals in the toilet at all times, including monitoring the inventory of chemical supplies stored in the forward baggage compartment.

#### **O. Staff Conduct**

Recognizing the effect of personal appearance, speech, conduct, and demeanor in communicating the appropriate sense of authority, assigned transportation staff will dress, speak, and act with the utmost professionalism. Assigned transportation staff will conduct themselves in a manner that reflects positively on ICE/ERO.

Transportation staff falls under the responsibility of the FOD with jurisdiction at each Center en route, whether during an intermediate stop or at final destination. This responsibility remains in effect until the vehicle's departure, and applies only to the current trip. If problems arise, then the lead driver must contact the FOD or designee.

Transportation staff will comply with all rules and procedures governing the use of government vehicles. They will not transport any personal items other than those needed to carry out their assigned duties during the trip. The possession or use of alcoholic beverages, tobacco products, and illegal drugs is strictly prohibited.

Using common sense, transportation staff will handle any crises that may arise. While treating all persons with courtesy and respect, they will not compromise security or safety.

#### **P. Firearms Storage**

When Centers allow weapons on the premises, every Center Administrator will ensure that the onsite supply of gun lockers can accommodate the non-resident transportation staff during stops at the Center. When Centers do not allow weapons on their premises, transportation staff will make alternative arrangements for storing weapons.

#### **Q. Vehicle Equipment**

The Center will provide all vehicles with the following equipment:

- Communication devices as appropriate;
- Cellular phone (back-up communication system);
- In the forward baggage compartment of buses, two equipment boxes containing:
  - In box #1, large bolt cutters, fuses, fan belts, jack, small hand tools, flashlight and appropriate batteries, lantern, rags, disposable trash bags, broom, ground cloth, two

### 1.3 Transportation (by Land)

sets of coveralls, and work gloves (fleet staff/Shop Supervisor maintains inventory and checks written inventory quarterly);

- In box #2, transmission fluid, water for radiator, oil, toilet disinfectant, extra fire extinguisher(s), road flares, and reflectors (transporting staff record amount and date used and by whom on inventory sheets kept in box #2, likewise maintaining material data safety sheets as necessary); and
  - Other equipment to be added as necessary (transporting staff will provide supervisors with written notification of inventory needs, including items that need replenishing or replacing).
- First-aid equipment bag (disaster kit), auxiliary to the first-aid kit in the driver's compartment (staff will document each emergency requiring first-aid treatment, including whether and how quickly the injured individual(s) received proper medical care);
  - Emergency blankets equal to the rated capacity of the vehicle;
  - Boarding bag containing extra forms, a camera that produces instant photographs, film, batteries, and emergency telephone numbers for ICE/ERO offices, local police, State police, etc.;
  - Spare tire and snow chains (if applicable); and
  - A copy of the appropriate emergency plan, including the listing of emergency telephone numbers for the respective Field Office, local police, State police, etc.

If applicable, all restraining equipment must be equal to the rated capacity of the vehicle, be of high quality, be maintained in good operating condition, and be kept in the forward baggage compartment with the other supplies.

The transportation staff will determine which safety and security equipment to use in an emergency. The staff will maintain restraints and other equipment in good working order.

#### R. Use of Restraints

Generally, restraints will not be used when transporting family units in accordance with this standard and the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints*.

#### S. Emergency Situations

If an emergency occurs within a reasonable distance of an ICE/ERO Center, then assigned transportation staff will make every effort to reach that Center before taking extraordinary measures. However, if moving seems ill-advised or impossible, then assigned transportation staff will contact the Center, stating their location and the nature of the problem, to ensure provisions for secure and immediate assistance.

### **1.3 Transportation (by Land)**

If the situation is life-threatening, then the transportation staff will take immediate action and not wait for help from an ICE/ERO Center. Staff then will notify the Center, which will contact the respective Field Office to coordinate an ICE response if possible or necessary.

The Center Administrator will establish written procedures for transportation staff to follow during an en route emergency. The written procedures will cover the following scenarios.

#### **1. Attacks**

If attacked, the transportation staff must request assistance from the nearest law enforcement agency, continuing to drive until the vehicle becomes incapacitated. The transportation staff will do everything possible to protect the safety of everyone in the vehicle.

#### **2. Residents Who Abscond**

If a resident absconds, then the assigned transportation staff will not jeopardize the security of the remaining residents by chasing the resident. Instead, transportation staff will notify the nearest ICE/ERO Field Office, providing the resident's name, A-number, height, weight, description of clothing, and the direction of flight (if known). The Field Office will relay this information directly to local law enforcement agencies.

Transportation staff will remain in place and wait for assistance. Under no circumstances will staff use the vehicle to pursue.

The transportation staff will prepare a fully documented written report of the incident and/or attempted incident.

#### **3. Hostages**

If a hostage situation occurs while in transit, then at least one assigned transportation staff member will secure the vehicle perimeter while another notifies the closest ICE/ERO Center of the situation. The assigned transportation staff will make every effort to determine who is involved and whether they are armed, relaying this information to the ICE/ERO Center and local law enforcement agencies. Under no circumstances will assigned transportation staff attempt to remedy a hostage situation, or take orders from the hostage takers, regardless of the status or rank of the hostages.

The transportation staff will hold all residents on board until help arrives, in the event that the hostage takers allow non-participants to disembark. Regardless of demands, the transportation staff will not allow any hostage-taker(s) off the bus, with or without the hostages. Transportation staff will follow instructions of the law enforcement agency managing the situation.

Because of the need to interview witnesses, examine the crime scene, etc., a hostage situation will effectively end a transportation assignment. Once the hostage situation is resolved, assigned transportation staff will receive instructions regarding how and where to proceed.

After the situation has been resolved, transportation staff will complete an incident report that will include information regarding participants, witnesses, and action taken.

#### **4. Illnesses**

If a resident or staff member becomes ill while in transit, then the assigned transportation staff will take appropriate action and alert the receiving Center in order to prepare to handle the situation.

### 1.3 Transportation (by Land)

If a resident or staff member becomes ill while in transit and the illness requires immediate medical treatment (e.g., in event of a heart attack), then assigned transportation staff will request assistance from the nearest medical center, local law enforcement agencies, and emergency services. The transportation staff will initiate life-saving procedures as appropriate, proceeding if security permits. The closest ICE/ERO Center will prepare procurement paperwork and make arrangements for hospitalization, security, etc.

For non-emergency illness, transportation staff will contact a supervisor for further instructions.

#### 5. Death

If a resident dies while in transit, then assigned transportation staff will notify the originating or receiving Center as soon as possible and will follow procedures specified in the ICE Family Residential Standard on *Terminal Illness, Advance Directives, and Death*.

The closest ICE/ERO office will coordinate with other agencies, including the coroner, who is required to be on the scene when the body is removed from the vehicle. The removal must take place in the State where death occurred. The ICE Family Residential Standard on *Terminal Illness, Advance Directives, and Death* specifies the procedures with which assigned transportation staff must comply.

#### 6. Fires

In case of fire in or on the vehicle, the driver will stop the vehicle immediately. The transportation staff will fight the fire with the on-board equipment. If necessary, assigned transportation staff will request assistance from the local fire department and law enforcement agency. If the fire forces evacuation of the vehicle, then the crew is responsible for maintaining accountability and security while removing residents in an orderly fashion.

#### 7. Disturbance/Fights/Riots

If a riot, fight, or any disturbance occurs on the vehicle, then the assistant driver will order the residents to cease and the driver will attempt to move the vehicle to the side of the road. If necessary, the staff will request assistance from the local law enforcement agency. Efforts will be made to determine the instigators, number of residents involved, and their names and A-numbers.

When sufficient assistance is available, the assigned transportation staff will attempt to regain control, using only as much force (e.g., with restraints or pepper spray) as necessary. Assigned transportation staff may not enter the passenger area while armed.

#### 8. Traffic Accident

The Center Administrator will establish written procedures for transportation staff involved in traffic accidents.

After an accident, assigned transportation staff will secure the area, request assistance from a local law enforcement agency, and obtain medical assistance for anyone injured. Regardless of the severity of the accident, the assigned transportation staff must report the accident to the local law enforcement agency and the nearest ICE/ERO office. They also must obtain a police report for the record, in case of future allegations or lawsuits against ICE/ERO or individual staff. The driver must record witnesses' names, addresses, and telephone numbers on Form SF-94 (or equivalent).



### **1.3 Transportation (by Land)**

The assigned transportation staff will discuss the issue of responsibility for the accident only with their chain of command. Upon arriving at the receiving Center, the assigned transportation staff will report the accident to the FOD or designee and prepare the required forms.

#### **9. Vehicle Failure**

The Center Administrator will develop written procedures for assigned transportation staff to follow when the vehicle develops mechanical problems en route.

Staff in an ICE/ERO-owned vehicle that develops mechanical problems en route will attempt to isolate the problem, and then will contact the nearest ICE/ERO office.

Unless the vehicle constitutes a traffic hazard in its current location, the transportation staff will not move it until instructed to do so. If the assigned transportation staff fails to connect with the ICE/ERO office, then they will try to reach a local law enforcement agency.

#### **10. Natural Disasters**

The Center Administrator will develop written procedures for transportation staff to follow in the event of severe weather or a natural disaster.

In a flood, dust storm, ice storm, tornado, or other natural disaster, the transportation staff will contact state authorities to assess road conditions along the planned route.

If driving conditions are unlikely to improve, then the transportation staff will look for a safe area to park the vehicle and request further instructions from the receiving Center.

Should it become necessary to exit the vehicle, the residents must be directed to a safe area. In such a case, staff must maintain a heightened alertness for the duration of the emergency. When the emergency has passed, the assigned transportation staff will return all residents to the vehicle and conduct an accurate count.

### **T. Transporting Women and Minors**

The Center Administrator will develop written procedures for transporting women and minors.

Except for emergent or extraordinary circumstances as approved by the FOD and the Juvenile and Family Residential Management Unit, women may not be transported by bus for more than 10 hours; minors may be transported by bus for up to 6 hours. When the trip exceeds 6 hours, transportation by car or van will be required, with frequent breaks. Transportation will occur during normal, waking hours unless otherwise deemed necessary.

Minors not under direct supervision of their parents/guardians will be separated from unrelated adults at all times during transport and seated in an area of the vehicle near staff and under their close supervision.

When transporting residents of the opposite gender, assigned transportation staff will report their time of departure and odometer reading, and subsequent destination arrival time and odometer reading. This procedure also will be followed for the return leg of the trip.

Centers will record this information in a designated Center log.

### **1.3 Transportation (by Land)**

Except in emergency situations, a single transportation staff member may not transport a single resident of the opposite gender.

If there is an expectation that a search will occur during transport, then staff will document all resident searches, including the reasoning and authorization, in a search log and in the resident's residential file. Staff will conduct all searches in accordance with the procedures outlined in the ICE Family Residential Standard on *Searches and Inspections*.

### **U. Transporting Special Needs Residents**

Centers will establish written plans for transporting residents with special needs to ensure that these needs are appropriately met.

## **References**

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Food Service
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on HealthCare
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Transfers
- ICE Family Residential Standard on Searches and Inspections
- ICE Family Residential Standard on Staff Training
- ICE Family Residential Standard on Terminal Illness, Advance Directives, and Death
- ICE Family Residential Standard on Use of Physical Control Measures and Restraints
- Memorandum dated 7/14/2006 on "Escape Reporting" from the ICE/ERO Director, which specifies requirements for the reporting, tracking, and investigating of the escape of an ICE/ERO resident
- U.S. Department of Transportation regulations

# 1.4 Housekeeping Program

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that Centers comply with applicable Federal, State, and local sanitation, health codes, and regulations. Centers will monitor environmental health programs to ensure a high standard of sanitation. This standard also sets forth personal housekeeping responsibilities for residents.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers will establish procedures for a written housekeeping plan.
2. Staff will monitor safety and sanitation conditions at all times and will report hazardous conditions promptly.
3. Adequate supplies of cleaning materials and equipment will be kept on hand at all times.

## Standards Affected

This Standard replaces the ICE Family Residential Standard on *Housekeeping and Voluntary Work Program* dated 12/21/2007.

## **1.4. Housekeeping Program**

### **Expected Practices**

Centers will afford residents basic U.S. Occupational Safety and Health Administration (OSHA) protections.

#### **A. Housekeeping Plan**

Centers will establish housekeeping plans that will include:

- A schedule for daily and other periodic cleaning and housekeeping that provides for a high level of sanitation; and
- Information on any special instructions, equipment, or supplies needed to carry out the schedule.

##### **1. General Housekeeping**

The Center Administrator will ensure that the Center maintains a high standard of sanitation and general cleanliness. When possible, the use of non-toxic cleaning supplies is recommended. Center staff shall be responsible for all general housekeeping and cleaning. Center Residents are responsible for general tidiness of their areas after meals and recreation time and Personal Housekeeping as noted below. General Housekeeping Procedures include:

- All horizontal surfaces will be damp dusted daily with an approved germicidal solution used according to the manufacturer's directions;
- Windows, window frames, and windowsills will be cleaned on a weekly schedule;
- Furniture and fixtures will be cleaned daily;
- Floors will be mopped daily and when soiled, using the double bucket mopping technique and with a hospital disinfectant-detergent solution mixed according to the manufacturer's directions;
- A clean mop head will be used each time the floors are mopped;
- Waste containers will weigh less than 50 lbs., be nonporous, and be lined with plastic bags. The liner will be changed daily;
- Waste containers will be washed weekly at a minimum, or as needed when they become soiled; and
- Cubicle curtains will be laundered monthly or during terminal cleaning following treatment of an infectious patient.

#### **B. Safety and Sanitation Inspections**

Centers will establish safety and sanitation inspection plans that will include:

- Daily inspections by staff assigned to Center living and activity areas;
- Weekly inspections by supervisory level staff; and
- Monthly inspections by Center safety teams.

#### **1.4. Housekeeping Program**

##### **C. Corrective Action**

Centers will establish formal corrective action procedures that will include the following:

- A mechanism to report potential safety issues immediately to the Shift Supervisor;
- A method to prioritize and correct issues in a timely manner; and
- A requirement to re-inspect noncompliant areas within seven days.

##### **D. Personal Housekeeping Required**

Adult residents will be required to clean and maintain their immediate living and activity areas daily. This personal housekeeping will include:

- Making their beds;
- Stacking loose papers;
- Keeping immediate living area floors free of debris and dividers free of clutter;
- Maintaining a neat and organized personal storage area;
- Refraining from hanging/draping clothing, pictures, keepsakes, or other objects from beds, overhead lighting fixtures, or other furniture; and

Adult residents will be provided information on any special instructions, equipment, or supplies needed to carry out their personal housekeeping.

## **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Environmental Health and Safety
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- U.S. Occupational Safety and Health Administration (OSHA) codes

## 2.1 Admission and Release

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents are admitted to and discharged from Centers in a safe and orderly fashion.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers will comply with appropriate policies and procedures when admitting, transferring, and releasing residents.
2. Centers will maintain accurate records and documentation in an ICE/Enforcement Removal Operations (ERO)-approved electronic format related to admissions, orientations, transfers, discipline, and discharges.
3. Each resident will be screened to ensure safe and secure Center operations.
4. During the admission process, residents and their personal property will be inspected using the least intrusive methods available and any contraband found will be processed properly. Searches of persons will be conducted in accordance with the ICE Family Residential Standard on *Searches and Inspections*.
5. During the admission process, each resident's personal property and valuables will be checked for contraband, inventoried, receipted, and stored in accordance with the ICE Family Residential Standard on *Funds and Personal Property*.

## 2.1 Admission and Release

6. During the admission process, each resident's identification documents will be forwarded to ICE/ERO.
7. During the admission process, residents will receive a medical and mental health screening.
8. Residents will undergo screening interviews and will complete questionnaires and other forms in accordance with this standard.
9. During the admission process, residents will have the opportunity to shower and will be issued clean clothing, bedding, towels, and personal hygiene items.
10. Newly arriving residents will be kept separated from admitted residents until admission processing is completed.
11. New admissions will be fully processed in fewer than 12 hours after arrival, barring documented exigent circumstances.
12. Newly arriving residents will receive a Center orientation.
13. If not completed during transport to the Center, the language spoken by the family will be identified and recorded. Residents will receive a Center ID that identifies the language spoken that is easily visible to Center staff.
14. Within two hours of arrival, residents will be allowed to make a free telephone call.
15. Residents will be discharged, removed, or transferred from a Center only when staff have followed specified procedures and completed required forms.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Admission and Release* dated 12/21/2007.

## Expected Practices

### A. Overview of Admission, Orientation, and Release

As detailed below, each Center is required to implement written policies and procedures for the intake and reception of newly arrived residents, and to provide these residents with information about Center policies, rules, and procedures. At intake, residents will be searched and their personal property and valuables checked for contraband, inventoried, receipted, and stored. Each resident's identification documents will be secured and given to ICE/ERO. Medical screening protects the health of the resident and others in the Center, and the resident will be given an opportunity to shower and will be issued clean clothing, bedding, towels, and personal hygiene items.

Each new arrival will undergo screening interviews, and will complete questionnaires and other forms. To maintain safe and secure Center operations, each newly arrived resident will be kept separated from the general population until he/she is classified and housed accordingly.

Each new resident will be oriented to Center operations through written material in the form of a resident handbook and local supplement (as appropriate), covering issues such as access to health



## **2.1 Admission and Release**

care services, sick call, and grievance procedures, and the Center's rules and prohibited acts. Residents will have an opportunity to view an orientation video.

Before a resident's discharge, removal, or transfer from a Center, staff must follow specified procedures and complete various forms.

### **B. Space**

Centers will designate an area to conduct admissions and discharges. This area will be separate from the general housing area and will contain the following:

- Adequate work space for Center and ICE staff;
- A separate area to conduct interviews regarding confidential information outside the presence of minors;
- At least one speaker telephone;
- Adequate space to search property; and
- An age-appropriate toddler and young children play area.

### **C. Admission and Release Documentation**

Centers will establish procedures for the reception of residents. These procedures must ensure the completion of all paperwork, verification of resident identity, and documentation confirming each admission is properly ordered by ICE/ERO. An alien file, temporary work file, and medical records as appropriate must accompany the arriving resident, unless ICE/ERO and Center officials have authorized other arrangements.

Centers will establish procedures for the discharge of residents. These procedures must ensure the completion of all paperwork, verification of resident identity to be discharged, and documentation confirming each discharge is properly ordered by ICE/ERO. Centers will return all resident funds, valuables, and property to residents prior to discharge.

### **D. Intake and Reception**

#### **1. Admission Processes**

All Centers will have in place a written policy and procedure related to the admissions process, which will include intake and admissions forms and screening forms. Staff members will be provided with adequate training on the admissions process at the Center. Admission processes for a newly admitted resident will include, but not be limited to the following items:

- Recording basic personal information;
- Photographing and fingerprinting arriving residents who are 14 years of age and older, including noting any identifying marks or other unusual physical characteristics;
- Identifying and recording the language spoken by the family, if not completed during transport to the Center. Residents will receive a Center ID that identifies the language spoken that is easily visible to Center staff;
- Conducting medical and mental health screenings;

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- Identifying residents with obvious or reported disabilities and engaging in an interactive process to determine whether an accommodation may be necessary;
- Taking inventory and issuing receipts for resident funds, valuables, and personal property in accordance with the ICE Family Residential Standard on *Funds and Personal Property*;
- Never separating children from their respective parents/guardians during the admission process unless shown that such separation is necessary to protect the child, or there is a demonstrated immediate threat to the Center's safe and secure operations;
- Providing a play area in the admission area that young children and toddlers can use under staff supervision while their parents/guardians are participating in an interview of a sensitive nature;
- Providing residents access and time to shower (or be bathed if an infant or young child) before entering the general population. Infants and young children will be bathed by their parent/guardian. During the resident's shower, a staff of the same gender may remain in the immediate area but will not observe the showering process;
- Providing a sack meal, or equivalent, within four hours of admission;
- Notifying ICE/ERO when a resident claims their property was lost or damaged during transit. ICE/ERO will advise the resident on the process for reporting and resolving lost or damaged property issues. Staff will document this notification in the resident's residential file;
- Conducting appropriate medical, mental health, and special needs screening by appropriate medical staff of each resident in accordance with the ICE Family Residential Standard on *Health Care*;
- Establishing a residential file on each new resident in accordance with the ICE Family Residential Standard on *Resident Files*;
- Issuing items to the resident that are appropriate for the Center's environment and local weather conditions in accordance with the ICE Family Residential Standard on *Personal Hygiene*;
- Assigning bedrooms according to individual resident needs, but generally maintaining family unity when assigning bedrooms;
- Issuing a resident handbook and local supplement (as appropriate) to each newly admitted resident 14 years of age and older in accordance with the ICE Family Residential Standard on *Resident Handbook*; and
- Allowing residents time and a place to make a free telephone call within two hours of Center arrival.

New admissions will be processed fully (to include initial classification, clothing and hygiene issuance, medical and mental health screening, and housing assignment) in fewer than 12 hours after arrival, barring documented exigent circumstances.

## 2.1 Admission and Release

**Screening of Resident.** All residents will be screened upon admission in accordance with the ICE Family Residential Standard on *Searches and Inspections*. Ordinarily, admission searches shall include: screening with a metal detector and a search of the resident's clothing.

### 2. Search of Clothing and Personal Items

Staff will focus search efforts on commonly used hiding and smuggling places, such as pockets, waistbands, seams, collars, zipper areas, cuffs, and shoe exteriors and interiors, including under the inner soles.

Staff also will inspect all open containers, and inventory and store factory-sealed durable goods in accordance with Center procedures.

Items discovered during the search of a resident or his/her property will be identified as:

- Contraband, and processed in accordance with the ICE Family Residential Standard on *Contraband*; or
- Funds, valuables, or other personal property, to be kept in the resident's possession or inventoried, receipted, and stored or mailed to an address provided by the resident, in accordance with ICE Family Residential Standard on *Funds and Personal Property*.

### 3. Search of Baggage and Personal Property

In accordance with the ICE Family Residential Standard on *Funds and Personal Property*, each Center will have a procedure for taking inventory and receipt of resident baggage and personal property (other than funds and valuables, which are addressed below).

Identity documents, such as passports, birth certificates, and driver's licenses, also will be inventoried and given to ICE/ERO staff. Center staff also will photocopy identity documents and place a copy in the resident's file, with documentation that the original copy was provided to ICE/ERO. Upon request, only ICE will provide residents a certified copy of any found identity documents.

Center staff will prepare an itemized list of the resident's baggage and personal property using a Personal Property Inventory form or its equivalent. If a resident has no baggage or luggage, then staff will use a Center container to store his/her personal property.

### 4. Funds and Valuables

In accordance with the ICE Family Residential Standard on *Funds and Personal Property*, each Center shall institute procedures for inventory and receipt of resident funds and valuables.

### 5. Missing Resident Property

When a newly arrived resident claims his/her property has been lost or left behind, staff will complete Form I-387 ("Report of Resident's Missing Property"). Centers will forward completed I-387 Forms to ICE/ERO. A copy will be provided to the resident.

### 6. Medical Screening

**Medical and Mental Health Assessments: History of Sexual Abuse.** Centers will conduct assessments pursuant to the Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement (DHS PREA 6 CFR §115.41) for each resident. If that assessment

## 2.1 Admission and Release

indicates that a resident has experienced prior sexual victimization or perpetrated sexual abuse and/or assault (SAA), then staff will, as appropriate, ensure that the resident is referred immediately to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate.

**Assessment for Risk of Victimization and Abusiveness.** The Center will assess all residents on intake to identify those likely to be sexual aggressors or sexual abuse victims. To mitigate such dangers and prevent SAA, Centers will house those identified residents appropriately. Each new arrival will be kept separate from the general population until he/she is classified and may be housed accordingly.

The Center also will consider, to the extent that the information is available, the following criteria to assess residents for risk of sexual victimization:

- Whether the resident has a mental, physical, or developmental disability;
- The age of the resident;
- The physical build and appearance of the resident;
- Gender;
- Although Centers generally do not house residents with criminal backgrounds, staff will ask all residents:
  - Whether the resident has been incarcerated or detained previously;
  - The nature of the resident's criminal history; and
  - Whether the resident has any convictions for sex offenses against an adult or minor.
- Whether the resident has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming, or has been diagnosed with gender identity dysphoria;
- Whether the resident has self-identified as having experienced sexual victimization previously; and
- The resident's own concerns about his/her physical safety.

The initial screening will consider prior acts of SAA, prior convictions for violent offenses, and history of prior institutional violence or SAA, as known to the Center, in assessing residents for risk of being sexually abusive.

The Center will reassess each resident's risk of victimization or abusiveness between 60 and 90 days from the date of initial assessment, and at any other time when warranted based upon the receipt of additional, relevant information or following an incident of abuse or victimization.

Residents will not be disciplined for refusing to answer or for not disclosing complete information in response to questions asked pursuant to this standard.

The Center will implement appropriate controls on the dissemination within the Center of responses to questions asked pursuant to this standard to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

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**Use of Assessment Information.** The Center will use the information from the risk assessment under DHS PREA 6 CFR § 115.41 to inform resident assignments. ICE will make individualized determinations about how to ensure the safety of each resident.

When making assessment and housing decisions for a transgender or intersex resident, the Center will consider the resident's gender self-identification and an assessment of the effects of placement on the resident's health and safety. The Center will consult a medical or mental health professional as soon as practicable on this assessment. The Center should not base placement decisions of transgender or intersex residents solely on the identity documents or physical anatomy of the resident; a resident's self-identification of his/her gender and self-assessment of safety needs always will be taken into consideration as well. The Center's placement of a transgender or intersex resident will be consistent with the safety and security considerations of the Center, and placement and programming assignments for each resident who is transgender, intersex, gender nonconforming, or diagnosed with gender identity dysphoria will be reassessed at least twice each year to review any threats to safety experienced by the resident.

Transgender, those diagnosed with gender identity dysphoria, and intersex residents will be given the opportunity to shower separately from other residents.

**Protective Custody.** The Center will develop and follow written procedures consistent with DHS PREA 6 CFR § 115.43 governing the use of protective custody in accordance with the ICE Family Residential Standard on *Sexual Abuse and Assault Prevention and Intervention*.

### 7. Establishing a Family File

As part of the admission process, staff will open a family file in accordance with the ICE Family Residential Standard on *Resident Files*.

### E. Clothing and Bedding

In accordance with the ICE Family Residential Standard on *Personal Hygiene*, staff will issue clothing and bedding items that are appropriate for the Center environment and local weather conditions.

### F. Admissions Documentation

Form I-203 ("Order to Detain or Release the Resident") bearing the appropriate ICE/ERO Authorizing Official signature, must accompany each newly arriving resident. Medical records and/or a book-in packet must accompany the arriving resident, unless ICE/ERO and Center officials have authorized other arrangements. Staff will prepare specific documents in conjunction with each new arrival to facilitate timely processing, classification, medical screening, accounting of personal effects, and reporting of statistical data.

### G. Orientation

Centers will have a procedure to provide a Center orientation to residents. Orientation procedures must be approved in advance by the Juvenile and Family Residential Management Unit Chief. Centers will provide a translator or use a language line for residents who do not understand the

## 2.1 Admission and Release

language or manner of the orientation presentation. The orientation process will include an initial orientation upon arrival, including a video in a language that the resident understands, and a follow-up orientation within 72 hours. The initial orientation will include information on:

- Legal access;
- Telephone access;
- Medical access;
- Food service;
- Emergency needs;
- Resident rights;
- Grievance procedures;
- The Center's Sexual Abuse and Assault Prevention and Intervention (SAAPI) program;
- Procedures for contacting the deportation officer handling the resident's case;
- Behavior management;
- An additional orientation provided by staff within 72 hours that will include an overview of the Center, review of the Center map, an overview of staff titles and functions, etc.; and
- A review of the resident handbook and local supplement (as appropriate) to include Center expectations, programs, medical, mental health, dental access, and services contained in the resident handbook and supplement.

Following the orientation, staff will conduct a question-and-answer session. Staff will respond to the best of their ability and will research and respond at a later date on questions they could not answer during the session. Under no circumstance may staff give advice about a legal matter or recommend a professional service. Staff also will demonstrate clearly to residents how to use the telephone system to make telephone calls, including free telephone calls to consulates and free legal service providers.

### H. Resident Handbook

Centers will issue to each newly admitted resident 14 years of age and older a copy of the resident handbook and any local supplement (as appropriate) in accordance with the ICE Family Residential Standard on *Resident Handbook*.

As part of the admissions process, the resident will acknowledge receipt of the handbook and supplement by signing a form acknowledging receipt.

### I. Release Procedures

As detailed below, each Center is required to implement written policies and procedures for the discharge of residents to ensure the completion of all paperwork and verification of the resident to be discharged, and will document that all discharges are properly ordered by ICE. Center staff assigned to discharge processing must complete certain procedures before any resident's discharge from the Center. Necessary steps include, but are not limited to: completing out-processing forms;

## 2.1 Admission and Release

closing files; returning personal property; reclaiming Center-issued clothing, identification cards, handbooks, and bedding; and verification for resident identities through the use of photos, biometrics, or other systems designed to prevent the accidental discharge of residents. ICE/ERO will approve all Center discharge procedures.

### J. Release Accommodations

The time, point, and manner of discharge from a Center will be consistent with safety considerations and will take into account special vulnerabilities of the resident, if any. Prior to discharge, the resident will be notified of the upcoming discharge and provided an opportunity to make a free telephone call to facilitate discharge arrangements. ICE/ERO and Center officials will determine who will be responsible for transporting discharged residents to local public transportation.

In locations where Centers will transport discharged residents, they will implement written policies and procedures to facilitate timely and safe transportation to the resident's discharge destination. These policies will be approved in advance by ICE/ERO. Such procedures will include coordinating transport with the discharge arrangements to ensure residents arrive at bus/train stations in time for their ticketed transport. Residents will be provided with a list of legal, medical, and social services that are available in the discharge community. Residents will be discharged with at least one set of noninstitutionalized, weather-appropriate clothing for the current and future destination, and necessary food, water, and infant/toddler supplies (i.e., diapers, wipes, formula) to last the period of transportation to their destination.

## References

- ICE Family Residential Standard on Contraband
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Personal Hygiene
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Files
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Searches and Inspections
- ICE Family Residential Standard on Sexual Abuse and Assault Prevention and Intervention



## 2.2 Contraband

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects residents and staff and enhances safe and secure Center operations by identifying, detecting, controlling, and properly disposing of contraband.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Contraband will be identified, detected, controlled, and disposed of properly based on established procedures.
2. Resident personal property that would be considered contraband within the Center will be mailed to a third party or stored until the resident's discharge, unless that property is illegal to possess or constitutes a threat to safety or security. Contraband that is considered illegal or a threat to the safety and security of the Center will be disposed of accordingly.
3. Contraband that may be evidence in connection with a violation of a criminal statute will be preserved, inventoried, controlled, and stored with a documented chain of custody.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Contraband* dated 12/21/2007.

## **Expected Practices**

### **A. “Hard” and “Soft” Contraband**

Contraband is anything residents are not authorized to have in their possession.

A resident found in possession of hard contraband could face corrective action or criminal prosecution. Hard contraband includes, but is not limited to, any item that:

- Is inherently dangerous; or
- May otherwise interfere with safe and secure Center operations.

Examples of hard contraband include:

- Ammunition or explosives;
- Combustible or flammable liquids;
- Hazardous or poisonous chemicals and gases;
- Weapons;
- Intoxicants;
- Currency (where prohibited); and
- Narcotics and other controlled substances not dispensed or approved by the medical unit, not used as prescribed, or in the possession of a resident other than the person for whom it was prescribed.

Staff will consult the Center pharmacist or other health services staff members when uncertain about whether a prescribed medication represents contraband.

Upon arrival, medicine the resident brings into the Center will be forwarded to the Center medical staff for disposition as specified under the ICE Family Residential Standard on *Health Care*. Only replacement medication duly approved by the Center medical staff will be dispensed to the resident.

Soft contraband includes, but is not limited to, “nuisance” items that do not pose a direct and immediate threat to safety or security, but that have the potential to create dangerous or unsanitary conditions in the Center (e.g., excess papers that create a fire hazard, inappropriate written materials, food items that are spoiled or retained beyond the point of safe consumption).

If excessive authorized legal materials create a fire hazard, then the Center will provide an alternate storage area accessible to the resident.

### **B. Procedures for Handling Contraband**

All Centers will have written policies and procedures for handling contraband, including the seizure of contraband, disputed ownership, resident or government property defined as contraband, and the preservation, inventory, and storage of contraband as evidence of a crime.

**2.2 Contraband****1. Contraband Seizures**

Staff will seize contraband:

- Found in the physical possession or living and activity area of a resident (including a resident awaiting repatriation;
- Found in common areas;
- Found in incoming or outgoing mail;
- Discovered during admission in-processing; and
- Found in transport vehicles.

Exceptions may occur only upon written authorization of the Center Administrator.

**2. Religious Items**

The Center Administrator will consult the Center's religious authority before confiscating a religious item that is deemed "soft" contraband (see also the ICE Family Residential Standard on *Religious Practices*).

**3. Disputed Ownership**

When a resident's claimed ownership of potential contraband material is in question, staff will:

- Inventory and store the items pending verification of ownership; and
- Provide the resident with a copy of the inventory as soon as practicable and place a second copy in the resident's file. The resident will have seven days following receipt of the inventory to prove ownership of the listed items.

When the resident establishes ownership, Centers will process the contraband, provide the resident a receipt, and place a copy of the receipt in the resident's file.

Centers will deny claims:

- Arising from the unauthorized use of government property; and
- For any item acquired, without authorization, from another resident.

When ownership is disputed, staff will attempt to resolve the ownership dispute. However, if ownership cannot be established, then Centers will hold the item for 120 days before considering its destruction, to afford residents ample opportunity to obtain verification of ownership and/or appeal the decision in accordance with the ICE Family Residential Standard on *Grievance System*.

**4. Resident Property Defined as Contraband**

Staff will seize all hard and soft contraband. In the event that the contraband is not illegal to possess under criminal statutes and would not otherwise pose a threat to security, staff will inventory and provide a receipt for the property. At the resident's request, the staff will mail the property to a third party, or store it with the resident's other stored personal property, in accordance with the ICE Family Residential Standard on *Funds and Personal Property*. If no storage is available and the resident chooses not to provide an appropriate mailing address within 30 days or is financially able but unwilling to pay the postage, then the Center Administrator, after ICE/Enforcement and

**2.2 Contraband**

Removal Operations concurrence and after providing the resident with written notice of the intent to destroy the property along with information on how to retain the property in question, may dispose of the perishable property in accordance with the Contraband Destruction section in this standard.

**5. Criminal Evidence**

Contraband that may be evidence in connection with a violation of a criminal statute will be preserved, inventoried, controlled, and stored with a documented chain of custody, and reported to the appropriate law enforcement authority for action and possible seizure, destruction, or disposition.

**6. Government Property**

Contraband that is government property will be retained as evidence for possible corrective action or criminal prosecution; after which, as appropriate, it may be:

- Returned to the issuing authority;
- Returned to normal stock for reissue; or
- Destroyed, with the approval of the Center Administrator.

**C. Contraband Destruction**

The Center Administrator will establish a procedure for the destruction of contraband items other than perishable property.

Contraband may be destroyed when no longer needed for corrective action or criminal prosecution. It also may be kept for official use, such as use as a training tool, if secured with limited access when not in use.

Staff will inventory and receipt hard contraband and it may be destroyed when no longer needed for corrective action or criminal prosecution. The ICE Family Residential Standard on *Grievance System* does apply to instances of hard contraband destruction.

Staff will inventory and receipt soft contraband and it may be mailed to a third party where appropriate, or stored with the resident's other unauthorized property, in accordance with the ICE Family Residential Standard on *Funds and Personal Property*. If no storage is available for the contraband, and the resident chooses not to provide an appropriate mailing address or is financially able but unwilling to pay the postage, then Centers will destroy perishable contraband. Centers will provide the resident with written notice of the intent to destroy the property and how to prevent that outcome.

Staff will determine whether an item will be destroyed.

Once it is determined whether an item will be destroyed, staff will send the Center Administrator a memorandum, through official channels, describing what is to be destroyed and the rationale for destruction.

The Center Administrator will require that an item of questionable ownership be held for 120 days before its destruction can be considered, to afford the resident ample opportunity to obtain proof of

ownership and appeal the decision in accordance with the ICE Family Residential Standard on *Grievance System*.

When corrective action is appropriate, the Center Administrator will defer his/her decision about the property until the disciplinary case, including any appeals, is resolved.

The staff member who physically destroys the property and at least one official observer will attest, in writing, to having witnessed the property's destruction.

A copy of the property disposal record will be given to the resident, and another copy will be placed in the resident's file.

#### **D. Canine Units**

Canine units will not be utilized in a residential program. Canine units will not be maintained at or near Residential Centers.

#### **E. Notice to Residents**

Centers will provide information on contraband to residents through the resident handbook and local supplement, and Center orientation, in a language or manner that they understand relative to:

- The Center's rules and procedures governing contraband; and
- Applicability of the ICE Family Residential Standard on *Funds and Personal Property* as it relates to contraband.

### **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on Grievance System
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Religious Practices
- ICE Family Residential Standard on Resident Handbook

## 2.3 Funds and Personal Property

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents' personal property, including funds, valuables, baggage, and other personal property, is safeguarded and controlled.

Various terms used in this standard also may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Safe and secure Center operations will be maintained through an immediate search of each newly admitted resident's property.
2. Centers will inventory, receipt, store, and safeguard resident funds, valuables, baggage, and personal property.
3. Centers will inform residents of what funds and property may be retained in his/her possession.
4. Centers will inform residents of the procedures for reporting missing or damaged property.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Funds and Personal Property* dated 12/21/2007.

## 2.3 Funds and Personal Property

### Expected Practices

#### A. General

All Centers are required to have written policies and procedures to:

- Account for and safeguard resident property from time of admission until date of discharge;
- Inventory and receipt resident funds and valuables;
- Inventory and receipt resident baggage and personal property (other than funds and valuables);
- Return funds, valuables, and personal property to residents being transferred or discharged;
- Assist residents reporting missing or damaged property;
- Investigate reported missing or damaged property if the loss or damage occurred at the current Center or in transit; and
- Conduct audits of stored resident funds, valuables, and property.

In many Centers, resident funds are deposited in the resident's commissary account. Centers without a commissary will provide secured storage or individual non-interest-bearing bank accounts for currently held resident funds.

Funds held in secured storage will be accessed only by designated supervisors and/or property staff.

Centers must have a property storage area that is secured when not supervised by staff.

Property staff must keep a property log or electronic equivalent to record the retention and return of resident funds, valuables, and other property.

Centers must have a dedicated safe for securing resident funds and valuables, only accessible by designated supervisors and/or property staff.

Centers must ensure proper accounting of retained resident funds, valuables, and property being held. Centers will conduct a minimum of monthly audits of property and property logs, or their electronic equivalents.

All Centers, at a minimum, will provide:

- A secured locker for holding large valuables, which can be accessed only by designated supervisors and/or property staff; and
- A baggage and property storage area that is secured when not attended by assigned admissions processing staff.

The baggage and property storage area will be maintained in a clean and orderly manner and inspected as often as necessary to protect resident property.

#### B. Contraband



## 2.3 Funds and Personal Property

All resident property arriving at Centers will be processed in accordance with the ICE Family Residential Standard on *Contraband*. Property will be considered contraband when possessed by residents without staff authorization. If any unauthorized personal property is contraband, then it must be surrendered to staff for securing, receipting, and inventorying.

### C. Resident Notice

Centers will provide to residents the resident handbook and local supplement (as appropriate), which will notify the residents of Center policies and procedures related to personal property, including:

- A list of items that residents may retain in their possession;
- The procedure for requesting access to stored items;
- The procedure for requesting a certified copy of identity documents (passport, birth certificate, etc.) placed in their alien files;
- The procedure for storing or mailing property not allowed in their possession;
- The procedure for claiming property upon discharge, transfer, or removal;
- The procedure for filing a claim for lost or damaged property;
- The procedure for accessing information contained on stored electronic media, such as personal cell phones or computers; and
- The procedure to access resident personal funds needed (for paying for legal services, sending money to family, etc.).

### D. Admission

Upon admission, residents will surrender all funds, valuables, and property to staff to be inventoried and processed. Staff will search and inventory resident property in the presence of the resident, unless instructed otherwise by the Center Administrator. All medications in possession of arriving residents will be forwarded to the Center health care provider. Standard operating procedure requires residents to provide a forwarding address that can be used if personal property is discovered at the Center after the resident's discharge, transfer, or removal.

### E. Limitations on Possession of Funds and Personal Property

Residents may keep a reasonable amount of personal property in their possession, provided it poses no threat to resident safety or Center security. Residents will be granted an opportunity to store excess property with a third party or, with the Center Administrator's permission, in the Center's personal property storage area.

Identity documents (e.g., passports and birth certificates) are held in accordance with the Family Residential Standard on *Admission and Release*. Each resident will be permitted to keep in his/her possession reasonable quantities of the following, as long as a particular item does not pose a threat to safe and secure Center operations:

- Small religious items, including religious jewelry items;

### 2.3 Funds and Personal Property

- Religious and secular reading material (softbound) and correspondence;
- Legal documents and papers, including property receipts;
- Up to 10 photographs measuring no more than 5 x 7 inches;
- Prescription glasses, reading glasses and/or sunglasses, and, when authorized by medical staff, contact lenses;
- Dentures;
- Medical devices;
- Personal address book or pages;
- Wedding ring;
- Artwork, crafts, etc., accumulated while in residence;
- Toys and small comfort items owned by resident minors; and/or
- Other items approved by the Center Administrator or designated staff.

Examples of items residents may not retain include the following:

- Unauthorized cash;
- Any unauthorized negotiable instruments;
- Jewelry, other than small religious items and wedding rings;
- Items over the value limit established by Centers;
- Drugs and medications not prescribed or authorized by Center medical staff;
- Prohibited publications in accordance with the Family Residential Standard on *Contraband*; and/or
- Originals of identity documents, such as passports, birth certificates, and driver's licenses.

### F. Property Storage

Centers will provide residents with lockers or other space in their living area for storing authorized property. If space constraints limit the amount of property residents may keep in their living area (excess toys, books, newspapers, magazines, etc.), then Centers also will provide a secure authorized property storage area that the resident may access during their stay.

### G. Excess Property

To prevent overcrowding and related storage problems, staff will encourage residents to send extra suitcases, televisions, and "soft" (not illegal or dangerous) contraband to a third party of his/her choosing.

The Center may make shipping arrangements for a resident requiring such help, and will assume the cost if the resident cannot afford postage.

## **2.3 Funds and Personal Property**

Staff will inventory the property and record the shipment address prior to shipment. Centers will provide a copy of this information to the resident and place a copy in the resident's residential file.

If a resident does not provide an appropriate mailing address within 30 days of entry, then the Center may make reasonable accommodations to store the excess property until the resident's removal or discharge. Ordinarily, the amount stored may not exceed 40 pounds.

### **H. Accessing Property**

#### **1. Stored Authorized Property**

Residents may access their own stored authorized property by requesting access through staff. A supervisor will arrange a time for the resident to access his/her property. Residents will be supervised while they are accessing their stored authorized property.

Should more than one family member request access or have claim to the same property, a supervisor will be engaged to resolve any conflict.

#### **2. Stored Unauthorized Property**

Residents will not be allowed in the unauthorized property area. When residents need information from electronic media, etc., stored there, they will request the information through staff. A supervisor will remove the items from the unauthorized storage, supervise the residents while they access the information, and return the items to the unauthorized property area after the information has been obtained.

### **I. Documenting Inventory and Receipt of Funds and Valuables**

Two staff will inventory resident funds, valuables, and other property in the presence of the resident.

Staff will use a G-589 "Property Receipt" form to document the inventory, which will include:

- The resident's alien number (A-number) and Center resident number (if used);
- The current date;
- The complete name of the resident, printed legibly;
- The complete names of the two staff inventorying the items;
- Description of the items inventoried (see specific description instructions below);
- Signature of the resident; and
- Signatures of the two staff conducting the inventory.

#### **1. Funds**

Centers will use the G-589 "Property Receipt" form to inventory any funds removed from a resident's possession. A separate G-589 form is required for each kind of currency and negotiable instrument.

The G-589 will include:

## 2.3 Funds and Personal Property

- In the “Quantity” column, the number of checks, money orders, or other negotiable instruments;
- In the “Description” column, the amount and type of currency, or the kind of check, money order, or other negotiable instrument;
- The name of the issuing bank, the register or check number, and the account name;
- For U.S. currency, the dollar sign (\$) followed by the dollar amount (e.g., \$100); and
- For foreign currency, the currency amount followed by the type (e.g., 140 Japanese Yen, 300 Euros, 4,000 Mexican Pesos).

When inventorying more than one kind of negotiable instrument, the staff will prepare as many G-589 forms as necessary to list separately all checks, all money orders, each additional category of negotiable instrument, and each type of foreign currency.

If cash is returned to the resident for possession inside the Center, then staff will record the transaction in the “Description” column of the affected G-589 form.

All the funds inventoried on a particular G-589 form will be secured in a property envelope having a tamper-proof closure. The funds then will be deposited in a cashbox, dedicated drop safe, or similarly secured depository until being deposited in the resident’s Center account.

### 2. Small Valuables, Including Jewelry

At least two staff members will inventory resident valuables in the presence of the resident.

The G-589 form will include:

- In the “Quantity” column, the number of each type of small valuable being inventoried;
- In the “Description” column:
  - Describe each item of value; and
  - Jewelry will be described in general terms (e.g., ring—“yellow/white metal with red/white stone”), with no mention of brand name or monetary value.

Valuables will be placed into a clear envelope, having a tamper proof closure.

### 3. Large Valuables

Large valuables are items that do not fit into property envelopes (e.g., televisions or musical instruments).

The G-589 form will include:

- In the “Quantity” column, the number of each type of large valuable being inventoried; and
- In the “Description” column, describe generally each item of value.

A baggage check (Form I-77) also should be used to tag each large valuable. See the Form I-77 Baggage Tags section in this standard for specific information on using baggage check (Form I-77).

## **2.3 Funds and Personal Property**

### **J. Processing the G-589 Form**

The two staff and the resident will sign all copies, after which the copies will be distributed as follows:

- Give the white original/first copy to the resident as a receipt; and
- Attach the blue/second copy to resident's I-385 booking card or resident file and insert the pink/third copy into the envelope containing the funds or valuables.

The staff inventorying the funds and valuables will record each G-589 form issued and the first and last name and any corresponding identifiers of receipting staff in the Center's G-589 form property receipt logbook. Staff then will deposit the secured envelope(s) in a Center drop safe or similarly secured depository.

### **K. Supervisor Processing of Funds and Valuables**

During each shift, the designated supervisory staff will verify the accuracy of all G-589 forms, record all funds and items in the drop safe or similarly secured depository in the supervisors' property log, and verify the disposition of all large valuables in the designated secured locked area.

The designated supervisory staff or equivalent will remove the contents of the drop safe or similarly secured depository during his/her shift and initial the G-589 accountability log. The supervisor will:

- Verify the accuracy of all G-589 forms;
- Record the amount of cash and describe each item in the supervisors' property log; and
- Verify the proper disposition of funds and valuables by checking the sealed envelopes in the cash box, the property envelopes in the safe or similarly secured depository, and the safekeeping of all large valuables in the designated secured locked area.

### **L. Processing of Baggage and Personal Property Other Than Funds and Valuables**

Centers will complete an itemized inventory of all resident baggage and personal property (separate from funds and valuables) during admissions, processing, and for property received during visitation or through the mail, using a "Personal Property Inventory" form or its equivalent. Each Center will inventory all property, even in the event that the property was inventoried previously by another Center and is contained in a sealed bag. If a resident has no container to hold the property, then a Center container will be provided to store his/her personal property.

A Form I-77 also will be issued for each separate item of baggage or container. See the Form I-77 Baggage Tags section in this standard for specific I-77 instructions.

All resident luggage and Center containers used for storing resident personal property will be secured in a tamper-resistant manner and will be opened only in the presence of the resident.

Staff will determine which items are authorized per Center policy and either allow the resident to retain the items (authorized) or place them into unauthorized storage.

## 2.3 Funds and Personal Property

### M. Personal Property

Personal property will be inventoried on a “Personal Property Inventory” form, or its equivalent, in the presence of the resident and must contain the following information at a minimum:

- Date and time of admission;
- Resident’s complete name and A-number or Center resident number;
- Description and quantity of articles (e.g., three pairs of pants);
- Disposition of the property, which may be indicated as:
  - “AE” for “authorized excess” property secured by the Center in the property room;
  - “AR” for “authorized retained” property kept by the resident in his/her living area; or
  - “U” for “unauthorized” property (soft contraband) secured by the Center in the property room.
- General condition of the property (e.g., new or used); and
- The signature and the printed name of the staff member completing the inventory and the signature and printed name of the resident.

### N. Form I-77 Baggage Tags

A pre-numbered, three-part Form I-77 will be issued for each large valuable and separate item of baggage or container. The front side of the Form I-77 has three parts: top (Part I); center (Part II); and bottom (Part III), the reverse side of which provides additional space to describe and identify the baggage or container.

Each Form I-77 will bear the resident’s full name and A-number/Center resident number and the date.

The resident’s signature must appear on both the top (Part I) and bottom (Part III) of the Form I-77.

The top part of the Form I-77 will be attached to the resident’s property.

The center part will provide a brief description of the large valuable or property container (television, black suitcase, paper bag, etc.) and will be attached to the resident’s booking card or resident file.

The bottom part will be given to the resident and the reverse side also will contain a brief description of the large valuable or property container.

All resident luggage and Center containers used for storing resident personal property will be secured in a tamper-resistant manner (e.g., by a tamper-proof numbered tie strap) and will be opened only in the presence of the resident.

A logbook will be maintained listing resident name, A-number or Center resident number, I-77 number, security tie-strap number, general property description, date issued, and date returned.

Tagged baggage and other large valuables will be stored in the Center secure baggage storage area.

## **2.3 Funds and Personal Property**

### **O. Inventory and Audit**

Centers will conduct at least monthly audits of resident funds, valuables, and other property utilizing two staff. Any discrepancies will be reported immediately to the Center Administrator and Juvenile and Family Residential Management Unit (JFRMU) Onsite Coordinator.

The Center's inventory audit will indicate the inventory's date and time, and the name or names of the staff conducting the inventory.

Both incoming and outgoing supervisors simultaneously will conduct an audit of resident funds, property envelopes, and large valuables where physical custody of, or access to such items changes with Center shift changes. The property and valuables logbook will record the date, time, and the name of the staff conducting the inventory. Any discrepancies will be reported immediately to the designated supervisor, who will follow Center procedure to ensure that all resident funds and valuables are accounted for.

For each audit, Centers will use Form G-786 "Alien Funds Audit Sheet," reflecting, at a minimum, the following information:

- Funds Held by Staff Other than the On-duty Supervisor: At no time will funds be held by staff other than the on-duty supervisor.
- Cash on Hand: The count is to be made by the incoming processing supervisor, who will fill in the appropriate blanks with the amount of each denomination (U.S. currency).
- Checks, Money Orders, or Other Negotiable Items: The incoming supervisor will conduct the count, and will complete the appropriate blanks reflecting the amount of checks, money orders, and other negotiable items.
- Total of G-589 Property Receipts: This figure represents the total amount of funds, checks, money orders, and other negotiable items as reflected by the copies of the G-589 forms in the cash box.
- Disbursed During Shift: This figure represents the total amount of funds disbursed during the shift. The outgoing processing supervisor will enter disbursement information.
- Received During Shift: This figure represents the total amount of funds collected during the shift. The outgoing processing supervisor will complete this information.
- Cash on Hand at End of Shift: This figure represents the amount on hand as counted by the outgoing processing supervisor. If the logged figure does not match with the cash currently on hand, then a new audit will be conducted. Security staff will follow Center procedures to ensure that all resident funds and valuables are accounted for.
- Number of Sealed Property Bags: In Centers without commissaries, a comprehensive weekly audit will be completed jointly by the Operations Supervisor or equivalent, and a staff member. The audit will be logged in the property and valuables logbook. Discrepancies will be reported to the supervisor. The supervisor will take the necessary steps, according to Center policy, to ensure that all resident funds and valuables are accounted for.



## **2.3 Funds and Personal Property**

### **P. Release or Transfer**

Centers will have a policy and written procedure for returning resident funds, valuables, and property when they are transferred, removed, or discharged.

After checking the I-385 form, “Resident Identification,” and property receipts to positively identify the resident being transferred, removed, or discharged, the resident will present the white copy of both the G-589 form(s) and I-77 form(s) for all receipted property.

Staff will compare signatures on Form I-77 receipt portions, and match cash funds, negotiable instruments, and valuables against property descriptions on the G-589 form.

For each I-77 presented, staff will compare the signature on the resident’s portion with the portion on the stored item and the portion on the booking card or resident file. Depending on the size and kinds of funds and valuables listed on the G-589 form, staff will conduct checks as follows:

- Small Valuables: Match the contents of the property envelope against the itemized list on all three copies of the G-589 form;
- Large Valuables: Match the tagged items against the description on all three copies of the G-589 form;
- Negotiable Instruments: Match the negotiable instruments against the description on all three copies of the G-589 form; and
- Cash Funds: Compare the property description(s) on the white, pink, and blue copies of the G-589 form.

After the property check, the property will be returned to the resident. The resident then will sign the blue/second copy of the G-589 form, indicating his/her receipt of all funds and personal property due him/her. The property log and inventory sheets will reflect the transaction.

### **Q. Lost or Damaged Property**

#### **1. General**

Centers will have a written policy and procedure for resident property reported to have been lost or damaged while at the Center. A lost property report will be required.

When residents arrive at Centers reporting property lost or damaged during transit, staff will notify ICE/Enforcement and Removal Operations (ERO), who will advise the resident on the process for reporting and resolving lost or damaged property issues. Staff will document this notification in the resident’s file.

If the property is not recovered or is recovered but in damaged condition, then staff will prepare a report for the Center Administrator, providing a description of any damage, the circumstances under which the property was last seen, the circumstances under which the loss or damage was discovered, and sworn statements from the resident and all witnesses.

ICE will be notified when a resident’s property is reported to have been lost or damaged while at the Center. A supervisor will investigate and, if necessary, take prompt action to prevent further

### **2.3 Funds and Personal Property**

losses. If the property is not recovered or is recovered in a damaged condition, then staff will prepare a report for the Center Administrator and the JFRMU Chief, providing:

- Name and A-number/Center resident number of the resident claiming ownership;
- Description of the property and, if applicable, damage;
- Date and time the loss or damage was discovered;
- Name(s) of person(s) discovering the loss or damage;
- The circumstances under which the person(s) discovered the loss or damage;
- Names and statements of all witnesses;
- Place, date, and time the property was last seen (before reported missing or damaged);
- The circumstances under which the property was last seen (before reported missing or damaged); and
- Sworn statements from the resident and all witnesses.

Residents claiming property was lost or damaged while at the Center will be allowed to initiate the claim before leaving the Center. The Center Administrator will send the results of the investigation of the resident's claim to the designated ICE/ERO staff. All efforts will be made to investigate claims and locate and return lost property. However, in such instances where the resident property cannot be located and returned, residents may file a civil tort claim for reimbursement by submitting an ICE I-387 form as provided by ICE/ERO.

### **2. Lost and Damaged Property**

All Centers will have and follow a policy for properly receipted lost or damaged resident property, as follows:

- All procedures for investigating and reporting lost or damaged property will be implemented as specified in this standard;
- Supervisory staff will conduct the investigation;
- Senior Center staff will process all resident claims promptly for lost or damaged property;
- The official deciding the claim will be at least one level higher in the chain of command than the official investigating the claim;
- The Center will reimburse residents promptly for all validated property losses caused by Center negligence;
- The Center may not impose an arbitrary ceiling on the amount to be reimbursed for a validated claim; and
- Designated staff will notify the designated ICE/ERO staff immediately of all claims and outcomes.

## 2.3 Funds and Personal Property

### R. Abandoned Property

Centers will report and transfer all resident abandoned property to ICE/ERO.

Contraband will be handled in accordance with the ICE Family Residential Standard on *Contraband*.

Because property obtained through non-appropriated funds cannot be donated, donations of abandoned property to charitable organizations are prohibited.

## References

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Contraband
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes

## 2.4 Key and Lock Control

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that keys and locks, including electronic keycards and codes, are properly controlled and maintained, thereby enhancing safe and secure Center operations.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. All staff will be trained in the proper care and handling of keys and locks, and wherever used, electronic keycards and keypads with codes.
2. Keys will be accounted for and controlled.
3. Locks and locking devices will be inspected, maintained, and inventoried continually.
4. All firearms will be stored in secure gun lockers before their carriers enter the Center.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Key and Lock Control* dated 12/21/2007.

**2.4 Key and Lock Control**

## **Expected Practices**

### **A. Overview**

Centers will have written policies and procedures to address the care and handling of keys, electronic keycards, and electronic codes (keys).

### **B. Proper Care and Handling of Keys and Locks**

All staff will be trained in and held responsible for adhering to proper procedures for the care and handling of keys, including electronic key pads where used. Initial training will be completed before staff is issued keys, and key control will be among the topics covered in subsequent annual training. Ordinarily, such training will be done by the key control staff, as described below:

- An employee who leaves the Center with a key ring will return it immediately upon realizing his/her mistake or when instructed to by the Center. Such an act will constitute unauthorized possession of Center property as well as a breach of security procedures;
- An employee who loses, misplaces, or otherwise cannot account for a key or key ring will alert the Shift Supervisor immediately and submit a written report promptly;
- Under no circumstances will staff allow a resident to handle Center keys;
- Employees will neither throw nor slide keys to one another;
- Staff will not use force to operate locks. If a key fails to operate a lock, then a supervisor will be notified immediately;
- If a key breaks inside a lock, then the employee will maintain visual oversight of the lock until the problem is repaired. If the key breaks inside a padlock, then the padlock itself will be removed and taken to the control center. In every instance, the employee will submit a memorandum on the incident to the Center Administrator; and
- Centers will use key covers for large security keys to prevent residents or other unauthorized persons from observing and duplicating them.

### **C. Key Control Staff/Designated Locksmith**

Each Center Administrator will establish the position of key control staff, or at a minimum, will assign a staff member the collateral security duties, as described herein. Centers may contract with a local locksmith provider to perform duties for which the assigned staff does not have the requisite expertise.

#### **1. Major Duties and Responsibilities of the Key Control Staff**

The key control staff and/or approved contracted locksmith will have a written position description that includes duties, responsibilities, and a chain of command.

The key control staff and/or approved contracted locksmith will have the following duties and responsibilities:

- Reports directly to the Security Manager;

## **2.4 Key and Lock Control**

- Conducts physical security surveys of all buildings and provides the Security Manager written recommendations regarding deficiencies and needed corrective actions;
- Plans and implements adequate preventive maintenance/replacement locks and other security devices;
- Identifies technical problems or malfunctions in electronic/automated and manually operated security systems and repairs them immediately or coordinates prompt repairs with the Center maintenance department;
- Overhauls, adjusts, and replaces worn parts on locking devices and systems;
- Maintains, adjusts, and services machines used in the lock shop;
- Is trained in the operation of gas/oxygen cutting tools and end saw equipment in case of an emergency;
- Conducts routine tests on emergency exit doors;
- Checks the keys to all emergency exits every 30 days and all other keys needed in emergencies quarterly, and documents the results; and
- Reviews all major work orders and in-house designs, plans, and specifications with the Center maintenance department for compliance with security requirements.

The Center Maintenance Supervisor or equivalent will consult with the Security Manager or equivalent and key control staff/designated locksmith before proceeding with new construction and renovation projects involving door hardware.

### **2. Required Locksmith Training**

Designated key control staff will complete an approved locksmith training program successfully or have a contractual agreement with locksmith services, preferably within the community.

This training will be supplemented with additional training in Occupational Safety and Health Administration Standards and the National Fire Prevention Association's Life Safety Codes. Manufacturer's instructions, user manuals, product orientations, and demonstrations also provide useful guidance and will be housed in a secure location.

### **3. Administrative Responsibilities**

The key control staff member is responsible for all administrative duties, including record keeping, concerning keys, locks, and related security equipment.

The key control staff or equivalent:

- Maintains a record keeping system that cross-references keys in the control center and lock shop, alphabetically and numerically, to facilitate quick identification of the key or key ring needed for a particular lock;
- Maintains accurate inventories of padlocks in use, master keys for cabinets, key blanks, and all keys currently in use; and

## 2.4 Key and Lock Control

- Maintains, for the historical record, a collection of reference material on locking devices and systems, including devices and systems previously used in the Center.

### 4. Supervision and Training

The key control staff will train and direct employees in key control, including electronic key pads where used.

The key control staff member is responsible for training an assistant locksmith or designated key control staff in all duties related to the position. The designated locksmith or key control staff member must be proficient in all phases of security and be able to demonstrate proper equipment use to other employees.

## D. Lock Shop Operation

### 1. Inventories

The key control staff member will maintain inventories of all keys, locks, key cards, electronic codes, and locking devices in the lock shop.

Lock shop inventories will include, at a minimum, the following:

- A secure master key cabinet containing at least one pattern key (never issued), and one or more spare keys. The cabinet will be kept locked except when in immediate use. The contents will be itemized on an inventory form;
- All key blanks, identified by model number and manufacturer's name, inventoried in a bound ledger or electronic database;
- All unassigned padlocks; and
- An inventory of assigned padlocks, with locations identified alphabetically or numerically.

### 2. Compromised Keys and Locks

The Center Administrator or Security Manager will establish procedures for handling compromised keys and locks.

Note: Compromised keys will be cut into pieces until irretrievably destroyed. The Center will document the type of key or lock; the number of keys or locks compromised; and the date, time, and method of destruction.

### 3. Safe Combinations

The key control staff will implement procedures for protecting the integrity of all safe combinations and electronic codes.

Note: The combination for each safe will be changed at least every 12 months and any time a staff member with access to a combination is assigned to another post or terminates employment. The combination to a safe will be sealed in an envelope bearing across the flap the date and signature of the person who deposited and sealed the combination inside the envelope. Any person(s) authorized to open the envelope will be listed, by name and title, on the front of the envelope. Envelopes containing safe combinations will be stored in the lock shop.



## 2.4 Key and Lock Control

Electronic codes will be kept on secure computer drives and encrypted databases. Only authorized person(s) will have access to the database. Printed hard copies of codes will be sealed in envelopes bearing across the flap the date and signature of the person who deposited and sealed the code inside the envelope. Any person(s) authorized to open the envelope will be listed, by title, on the front of the envelope. The code for electronic security devices will be changed any time staff with access to the code changes post assignments or is terminated, or if a keycard is lost or stolen.

### 4. Keying Authorized and Non-authorized Locks

Locks not authorized for use in resident accessible areas include, but are not limited to, snap, key-in-knob, thumb-turn, push-button, rim-latch, barrel or slide bolt, and removable-core-type locks (including padlocks). Any such locks in current use will be phased out and replaced with mortise lock sets and standard cylinders.

Grand master keying systems are not authorized.

A master keying system may be used only in living and activity areas where residents have individual room keys. The number of doors will be kept to a minimum and the unit staff's key must override all functions of such locks.

After removing the Center number and key cuts, the key control staff will cut into pieces and dispose of worn or discarded keys and locks.

Entrance/exit door locks of living and activity areas, work areas, chapels, gyms, and other areas with room capacity of 50 or more people will meet the standards specified in the Occupational Safety and Environmental Health Manual (Chapter 3) and in the National Fire Protection Association Life Safety Code 101.

Individual doors to areas with room capacity of 50 or more people will have no more than one lock each. Padlocks will not be used on exit doors or intermediate doors along the exit route.

Padlocks and/or chains may not be used on living and activity area/suite doors.

Padlocks and hasps may be used only where specified below:

- Fence gates in areas without ceilings;
- Freezer door interiors whose lock release systems include panic release device(s); and
- Vehicle roll-up door walk-through exit(s).

### 5. Preventive Maintenance

The key control staff or designee will implement a preventive maintenance program.

The key control staff will perform preventive maintenance services, including but not limited to the following:

- Adjust and service vehicle gates for changing weather conditions (i.e., hot/cold) twice a year, in the spring and early fall;
- Adjust and service front entrance and other gate operations at least once a year;
- Lubricate all other locks quarterly, per manufacturers' instructions;

## 2.4 Key and Lock Control

- Perform maintenance checks on locks and locking systems, taking corrective action as necessary; and
- Once every five years, at least:
  - Steam-clean vehicle gates; and
  - Clean locking mechanisms of front entrance gates, other gates, and locking mechanisms using steam or other means.

The Center Maintenance Supervisor is responsible for door hardware installation and maintenance (e.g., closures, hinges, pulls, kick plates), and for providing certain support services (e.g., welding, electrical work) to the designated locksmith or key control staff, as needed.

### 6. Preventive Maintenance Documentation

The key control staff will maintain all preventive maintenance records. The key control staff's preventive maintenance files will include:

- Date;
- Location of lock or locking mechanism;
- Type of maintenance performed;
- Rationale for changing key combination(s); and
- Signature of service provider.

## E. Key Cabinet

### 1. Location

An operational keyboard large enough to accommodate all Center key rings, including keys in use, will be located in a secure area.

This operational keyboard will be located in the control center. An electronic key control box may be placed outside the control center if in a secure unit.

### 2. Basic Construction

The key cabinet will be constructed so that keys are visible only when being issued. Keys may never be seen by residents or visitors.

Small, closet-type space in the control center may be used instead of a cabinet, as long as:

- Access limitations are the same as for a key cabinet;
- All other key/lock standards are met; and
- The space is used solely for key control.

In the key cabinet:

- Keys in vertical rows will be arranged in alphabetical order;
- Keys in horizontal rows will be arranged in numerical order;

## 2.4 Key and Lock Control

- The label identifying the letter or number of the key ring that belongs on a particular hook will be visible even when the key ring is on the hook; and
- Any hook without an assigned key ring will be tagged with a metal chit that indicates “hook not in use.”

### 3. Key Rings

The designated locksmith or key control staff will implement procedures for identifying every key ring and every key on each key ring, and for preventing keys from being removed from key rings, once issued.

All key rings will be heavy-gauge wire that has been welded or brazed to prevent removal of keys from the ring.

Two metal tags of unequal size will be attached to each key ring:

- The larger tag will identify the key ring with a number/letter corresponding to the hook number/letter; and
- The smaller tag will identify the number of keys on the key ring.

### 4. Emergency Keys

Emergency keys will be on hand for every area to or from which entry or exit might be necessary in an emergency.

Emergency keys may be kept in a separate key cabinet or in a readily identified area of the regular-issue key cabinet. A separate key cabinet located in the control center is recommended for the emergency keys.

The emergency key cabinet will contain a hook for each key ring. If an emergency key ring is kept outside the main emergency key cabinet, then a metal tag providing the key ring's location will hang on the hook intended for that key ring in the main emergency key cabinet.

The emergency keys will be cut precisely to manufacturer's specifications.

Emergency keys will not be rotated in and out of the lock shop.

## F. Issue of Key Rings

### 1. Chit System

Centers will use a chit system or other standard system for the issuance and accountability of key distribution. A key chit is a tag (usually metal) that identifies the person who has drawn a set of keys.

The chit will be labeled with the staff's first initial and last name. All key rings will be issued as needed (e.g., at the beginning of a shift) with the exchange of a chit for a key and with the chit placed on the hook from which the key was removed.

An employee who reports to work without chits must obtain temporary chits from the control room staff, which he/she can exchange for keys according to standard procedure.

Control room staff will maintain accountability for the issued chits.

## 2.4 Key and Lock Control

At the end of the shift, the employee will return the temporary chits personally to the control room staff.

At shift rotation, to obtain keys from a staff person on post, the relief staff first must exchange his/her key chit at the control room center for the key chit of the employee being relieved. The relief staff will take his/her key chit to the employee being relieved and exchange the key chit for the appropriate ring of keys. Staff will then count the keys on his/her ring, immediately reporting any discrepancies to the Shift Supervisor. If the relief staff needs to gain access to any location while heading from the control room center to his/her post, then the control room staff may issue him/her a second set of keys. In such a case, staff will return the extra set of keys to the control room staff at the end of the relief shift.

### 2. Restricted Keys

The Center Administrator will establish rules and procedures for authorizing use of restricted keys. Control room staff must have authorization from the Shift Supervisor to issue a restricted key.

**Pharmacy.** Pharmacy keys will be strictly controlled. Ordinarily, such controls include:

- Maintaining pharmacy keys in a restricted keys cabinet in the control room, and issuing them only to authorized pharmacy staff; and
- Maintaining a second set of pharmacy keys in the lock shop.

In the event of a non-medical emergency that necessitates entry into the pharmacy by anyone other than authorized pharmacy staff, the highest-ranking supervisor on duty may authorize immediate entry to the pharmacy. The supervisor will then document the reasons for entry and sign the authorization.

Such documentation will not impede the immediate provision of emergency medical care to a resident by medical staff.

**ICE and Executive Office for Immigration Review (EOIR) Offices.** Keys to ICE and the EOIR office and courtroom areas will be restricted and controlled similarly. In the event that a key is authorized for emergency withdrawal, a copy of the restricted key form is to be provided to ICE.

### 3. 24-hour Issue Keys

No key or key ring may be issued on a 24-hour basis without the Center Administrator's written authorization.

A key chit identifying the borrower of the key ring will be placed on the appropriate hook in the key cabinet, along with a metal tag marked "24-hour issue."

Individual authorizing record forms will be used to record the following information about each set of 24-hour issue keys:

- The key ring identifiers (number and title);
- The number of keys on the ring;
- The individual key numbers; and

**2.4 Key and Lock Control**

- The door each key unlocks.

Each record must bear the signatures of the authorizing Center Administrator, Security Manager, and the employee to whom the keys are issued.

**4. Security Keys**

Key rings used but not issued on a 24-hour basis because of the attached security keys will be kept in a dedicated glass-front, lockable box in the control center. Identical boxes may be kept and used in different departments, provided staff members are authorized to receive 24-hour keys. The key to every such box will be issued on a 24-hour basis.

The staff member removing keys from the box will place his/her chit on the hook in place of the key ring, and will return the keys and reclaim the chit at the end of the shift. The individual to whom the keys were issued will return the keys to the box personally, without exception.

Security keys may not be taken off Center property (except for bus, van, and other authorized vehicle keys). As a rule, security keys will not be issued on a 24-hour basis.

**5. Key Accountability**

The Center Administrator will establish written policy and implementation procedures to ensure key accountability.

Control room staff will conduct a key ring audit upon reporting for duty, accounting for each key ring in the control center logbook, and will report discrepancies in the record immediately to the Shift Supervisor.

Control room staff also will identify broken or bent keys. All keys (regular issue and emergency) will be checked and counted daily.

To ensure accountability, keys will be issued only on the assigned key rings.

**6. Request for Key Change**

Key change requests will be submitted, in writing, to the Center Administrator. Upon Center Administrator approval, only the designated locksmith or key control staff may add or remove a key from a ring.

**7. Split Key Ring**

The splitting of key rings into separate rings is not authorized.

**G. Gun Locker Keys**

Officers will store all their weapons in individual lockers before entering the Center.

The Center Administrator will develop and implement site-specific procedures for controlling gun locker access.

In all Centers, gun lockers will:

- Be placed in locations where officers can observe them continuously, in person or on a video monitor, and not in any area that has resident or public access;

## **2.4 Key and Lock Control**

- Be used to store the weapons of all on-duty officers, except those whose assignments require them to carry weapons; and
- Not be used for long-term storage. (A staff member may arrange with the Center Firearms Control Officer for long-term storage of a weapon in the armory.)

Chits and logbooks are useful for maintaining accountability for gun locker keys and gun locker use.

## **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- National Fire Protection Association Life Safety Codes (#101)
- Occupational Safety and Environmental Health Manual (Chapter 3)

## 2.5 Resident Census

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures Centers have an effective resident accountability system to maintain safe and secure Center operations.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Safe and secure Center operations will be maintained through an ongoing, effective system of taking a population census.
2. Centers will ensure accountability of all residents assigned to the Center.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Resident Census* dated 12/21/2007.

### Expected Practices

#### A. Center Policies

A census will be conducted three times daily at specific times of the day and night. A Shift Supervisor will verify count accuracy.

Designated staff will be assigned as the official Census Coordinator.



**2.5 Resident Census**

During a census, residents either report to pre-designated areas at specified times or check in with staff as required.

Staff overseeing residents in particular areas (attorney/client and social visitation, court, medical unit, etc.) will notify the Census Coordinator of residents who remain in those areas during the census and instruct those residents not to otherwise participate in that particular census.

Face-to-face photo verification will be required during each census, utilizing resident identification cards or other resident photo identification.

“Head counts” and “roll calls” are not permitted when conducting a census.

Center rules require that all residents cooperate with the census process or receive sanctions as described in the ICE Family Residential Standard on *Behavior Management*.

Residents are prohibited from conducting the census or participating in the preparation or documentation of the census process.

A census will not be conducted during sleeping hours, and staff will not shine lights or otherwise disturb residents during sleeping hours for the purpose of conducting a census unless an exigent circumstance exists.

When the census has been completed, the Census Coordinator will log and report the census result to the Shift Supervisor responsible for accepting and clearing the census. The Shift Supervisor will add the census total and the temporarily off-site total and compare that result against the master roster. If that total is not in agreement or if census accuracy is in doubt, then all residents will be required to return to a designated area and another census will be completed.

In the event a resident is still unaccounted for after the second census, the Shift Supervisor will initiate an emergency count as indicated in the Master Roster section in this standard.

**B. Resident Notice**

Centers will provide information on the mandatory resident census procedures to residents during Center orientation and alert residents to the census procedure information in the resident handbook and local supplement, as appropriate. Parents/guardians will be responsible for ensuring their children understand and comply with census procedures.

**C. Master Roster**

Designated staff will maintain a real-time master roster of all residents who currently are assigned to the Center. Staff responsible for keeping the master roster must be provided with up-to-the-minute information regarding resident admissions and discharges, and any other changes that may affect resident accountability. A real-time roster will be maintained and available at all times.

**1. Temporary Off-site Roster**

Designated staff will maintain and record an accurate and real-time accounting of all residents who are temporarily off-site.

**2.5 Resident Census**

When residents temporarily leave the Center (e.g., a field trip, off-site medical appointment) designated staff will record in the log the resident's name, alien number, date and time of departure, destination, and the date and time of return.

**2. Emergency Count**

An emergency count will be conducted when there is reason to believe a resident is missing, or after a major disturbance has occurred to ensure that no residents or staff are unaccounted for.

All residents will return to their living areas during emergency counts. Emergency counts will include face-to-face photo verification. All other Center policies will be followed.

If the emergency count reveals that a resident is missing, then Centers will implement the emergency plan specified in the ICE Family Residential Standard on *Emergency Plans*, and will notify the Field Office Director and Juvenile and Family Residential Management Unit Chief immediately.

**References**

- ICE Family Residential Standard on Behavior Management
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Emergency Plans
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes

## 2.6 Searches and Inspections

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects residents and staff and enhances safe and secure Center operations by conducting searches and inspections in a professional manner to avoid harassment, indignity, embarrassment, and unnecessary force.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents will live and work in a safe and orderly environment.
2. Contraband will be controlled.
3. Staff of the same gender as the resident will conduct pat searches of the resident. Searches of the resident's property, living and activity areas, or other areas may be conducted by staff of either gender.
4. Searches and inspections of residents as well as living and activity areas will be conducted without unnecessary force and in a manner that preserves the dignity of residents.
5. Centers will abide by all State or other licensing requirements that may be more restrictive than the Family Residential Standards. Centers will consult with ICE and the Juvenile and Family Residential Management Unit (JFRMU) as required.
6. Only pat searches are permitted at FRCs.

## 2.6 Searches and Inspections

7. When pat searches are conducted, the least intrusive practicable search method will be used, as indicated by the type of contraband and the method of suspected introduction or concealment.
8. Pat searches will be conducted only when there is documented reasonable belief or suspicion that contraband may be concealed on the person, and, if required, when properly authorized by a supervisor.
9. Minors will not be subject to search of their person without parental consent, without documented reasonable suspicion that contraband may be concealed, and without the explicit authorization of the Field Office Director (FOD) in consultation with OPLA and with notification to the JFMRU Chief.
10. Strip searches and body cavity searches will not be conducted at FRCs. Centers will contact ICE Field Office Director, the JFRMU Chief, and local law enforcement (as appropriate) if there is an imminent, clearly substantiated and articulated threat to life or safety that necessitates such an invasive search.
11. Contraband that may be evidence in connection with a violation of a criminal statute will be preserved, inventoried, controlled, and stored so as to maintain and document the chain of custody.
12. Staff conducting a search must be of the same gender as the resident.
13. Canines will not be used in a Residential Center.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Searches of Residents* dated 12/21/2007.

## Expected Practices

### A. Written Policy and Procedures Required

All Centers will have written policy and procedures consistent with this standard for the following:

- Properly documenting procedures for searches and inspections;
- Searching resident living and activity areas;
- Conducting pat down searches;
- Using the least intrusive method of search practicable, as indicated by the type of suspected contraband and the method of suspected introduction or concealment;
- Preserving the dignity of the resident being searched;
- Notifying local law enforcement and process for observing/monitoring resident pending arrival;
- Avoiding unnecessary disruption of living and activity areas and leaving a searched area and resident's property in its original order, to the extent practicable;

## 2.6 Searches and Inspections

- Handling contraband;
- Preserving evidence; and
- Issuing receipts for property taken during a living and activity area search.

### B. Staff Training

All staff who conduct searches of physical areas or pat searches of a resident's body will receive initial training regarding search procedures prior to conducting any searches, and will receive annual training in authorized and appropriate techniques thereafter.

### C. Searching Resident Living and Activity Areas

Searches of a resident's personal items will include notification to the resident and require his/her presence unless emergent health or safety circumstances exist. In emergent health or safety circumstances, staff may search a resident's living or activity areas, and personal items contained within those areas, without notice to or approval from the resident and in the resident's absence.

Each Center will establish procedures to ensure all living and activity areas are searched routinely, but irregularly, as such inspections are primarily intended to:

- Detect and deter the introduction of contraband;
- Maintain health and sanitary standards; and
- Eliminate fire and safety hazards.

Staff will maintain written documentation of all living and activity area searches.

### D. Pat Searches of Residents

Staff will document all resident searches, including the reasoning and authorization, in a search log and in the resident's residential file. Staff will conduct all searches in accordance with the procedures outlined below.

Minors will not be searched without the presence and consent of the parent. When the parent is not available, searches will require the explicit authorization of the FOD and JFRMU Chief.

Authorization will be granted only when a life or imminent public safety issue has been clearly substantiated. The parent will be notified as quickly as possible of the search in these situations.

Residents may be pat searched only when reasonable and articulable suspicion can be documented and upon approval from the Center Administrator.

A pat search (or "pat down") is a sliding or patting of the back of the hands over the clothed body of a resident which may include the head/hair, by staff to determine whether the individual possesses contraband.

A pat search does not require the resident to remove clothing (with the exception of outerwear that may interfere with the pat down such as coats, jackets and hoodies), although the inspection includes a visual search of the resident's clothing and personal effects.

## 2.6 Searches and Inspections

Whenever an adult resident must be searched, staff will conduct the search outside the presence of their children.

Hand-held and/or stationary metal detectors will be available and may be used in lieu of, or in addition to a pat search.

Staff will not conduct a pat search of a resident on a routine or random basis to control contraband without a threshold level of reasonable suspicion.

**Gender of Staff Member.** Pat searches will always be conducted by staff of the same gender as the resident.

All pat searches shall be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs, including consideration of staff safety.

Staff will be trained in proper procedures for conducting pat searches, including securing parental consent; observations; and searches of transgender, gender nonconforming, and intersex residents.

### E. X-rays

#### 1. Residents

In certain circumstances, depending on the resident, the type of suspected contraband, and any associated medical concerns, the Center physician may authorize use of X-ray technology to conduct the search. An X-ray exam requires the resident's written consent or the consent of a parent for minors. If the resident does not provide consent, then X-ray examination should not be performed.

Whenever a child must be X-rayed, his/her parent/guardian must be present.

Only the FOD and JFRMU Chief may authorize the Clinical Medical Authority to order a non-repetitive X-ray examination for the purpose of determining whether contraband is concealed in or on the resident (e.g., in a cast or body cavity).

Such approval and authorization will be based on the determination that:

- An X-ray examination is necessary for safe and secure Center operations or the health of the resident;
- No reasonable alternative exists; and
- The examination is not likely to result in serious or lasting medical injury or harm to the resident, based on the determination of qualified medical staff.

Staff will place documentation of the examination, the authorizations, and the reasons for the examination in the resident's file and medical file.

#### 2. Property

The Center Administrator may direct X-rays of resident property and will ensure that the resident is not exposed.

## **2.6 Searches and Inspections**

### **F. Preserving Evidence**

Contraband that may be evidence in connection with a violation of a criminal statute will be preserved, inventoried, controlled, and stored so as to document and maintain the chain of custody, and will be reported to the appropriate law enforcement authority for action and possible seizure and prosecution.

### **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Visitation



## 2.7 Sexual Abuse and Assault Prevention and Intervention

### Introduction

This U.S Immigration and Customs Enforcement (ICE) Family Residential Standard requires that Centers act affirmatively to prevent resident sexual abuse and/or assault (SAA); provide prompt and effective intervention and treatment for victims of SAA; and control, discipline, and prosecute the perpetrators of SAA.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers will articulate and adhere to a written zero-tolerance policy for SAA.
2. A designated Prevention of Sexual Assault (PSA) Compliance Manager will assist in ensuring Center compliance with sexual abuse and assault prevention and intervention (SAAPI) policies and procedures.
3. Staff will receive training on their responsibilities under the Center's SAAPI program.
4. Residents will be informed about the Center's SAAPI program.
5. The Center will utilize available community resources to provide victim services and other appropriate support to the fullest extent possible following incidents of SAA.

## **2.7 Sexual Abuse and Assault Prevention and Intervention**

6. Staff will be alert to potential risks or signs of SAA and take appropriate action to mitigate any identified risks or to protect a resident as necessary.
7. Residents will be screened upon intake for risk of sexual victimization or abusiveness and housed accordingly.
8. The Center will use a coordinated, multidisciplinary team approach to respond to all incidents of SAA effectively and address any safety, medical, or mental health needs.
9. Staff will report immediately any knowledge, suspicion, or information regarding an incident of SAA, retaliation against individuals who reported an incident, or any staff misconduct or violation of responsibilities that may have contributed to an incident or retaliation.
10. All allegations of SAA will be reported immediately to ICE/Enforcement and Removal Operations (ERO), and any other required entities based on the nature of the allegation.
11. Alleged victims will be referred promptly for medical or mental health services, as appropriate, and receive any necessary emergency or ongoing care related to the incident.
12. Staff suspected of perpetrating SAA will be removed from all duties requiring resident contact pending the outcome of the investigation.
13. Centers will ensure that each allegation of SAA is investigated by an appropriate criminal or administrative investigative entity and will cooperate with all investigative efforts to ensure a thorough and objective investigation.
14. Staff or resident perpetrators will be disciplined appropriately for any confirmed acts of SAA.
15. Centers will conduct a review following every investigation of SAA and on an annual basis, to assess whether changes to Center policy or practice could better prevent, detect, or respond to SAA.
16. The Center will maintain all records associated with incidents of SAA in appropriately secure files and locations.

### **Standards Affected**

This standard replaces the ICE Family Residential Standard on *Sexual Abuse and Assault Prevention and Intervention* dated 12/21/2007.

### **Expected Practices**

#### **A. Written Policy and Procedures Required**

Each Center's policy and procedures will reflect the unique characteristics of each Center, based on factors such as the availability of specialized community-based services, including rape crisis/trauma units in local medical centers, clinics, and hospitals.

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Each Center will have written policies and procedures for a SAAPI program. These policies must mandate zero-tolerance toward all forms of SAA, direct the Center's approach to preventing, detecting, and responding to such conduct, and include, at a minimum:

- Procedures on preventing SAA, including:
  - Procedures for assessing all residents for their risk of sexual abusiveness or victimization;
  - Procedures for housing residents in accordance with their classification assessment;
  - Training of all employees, contractors, and volunteers on ICE's and the Center's zero-tolerance policies and their responsibilities under those policies; and
  - Notification to residents of the Center's SAAPI program.
- Procedures for immediate reporting of SAA allegations, including:
  - Procedures for immediate reporting of any knowledge, suspicion, or information regarding SAA allegations through the Center's chain of command, from the reporting official to the highest Center official as well as the Field Office Director (FOD), and a method by which staff can report outside the chain of command;
  - Responsibility of all staff to report allegations or suspicions of SAA;
  - Referrals to law enforcement agencies;
  - Written documentation requirements to ensure that each allegation or suspicion is reported and addressed properly;
  - Guarantee that residents have multiple, effective avenues for privately reporting: SAA, retaliation for reporting SAA, or staff misconduct or violations of responsibilities that may have contributed to such instances; and
  - A method to receive third-party reports of SAA in its Center, with information made available to the public regarding how to report SAA on behalf of a resident.
- Procedures for prompt and effective intervention to address the safety and treatment needs of resident victims if an alleged SAA occurs, including:
  - Procedures for offering immediate protection, including prevention of retaliation, along with medical and mental health, legal, and safety referrals;
  - Plans to coordinate actions taken by staff first responders, medical and mental health practitioners, investigators, and Center leadership in response to an incident of SAA; and
  - Methods for addressing the alleged victim's future safety and medical and mental health needs.
- Procedures to include victim advocate services in SAAPI programs, if such resources are available;
- Procedures for investigation and discipline of assailants, including:

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- Coordinating with ICE and other appropriate investigative agencies to ensure that an administrative or criminal investigation is completed for all allegations of SAA;
  - Following a uniform evidence protocol, including access to a forensic medical exam, which maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions;
  - Coordinating internal administrative investigations with the assigned criminal investigative entity to ensure noninterference with criminal investigations, as well as coordination with the ICE/Office of Professional Responsibility (OPR); and
  - Disciplinary sanctions for staff, up to and including termination, when there is a substantiated allegation of SAA, or when staff has violated ICE SAA policies.
- Procedures for data collection and reporting; and
  - A requirement to cooperate with all audits and monitoring of Center compliance with SAA policies and standards.

The Center's written policy and procedures require the review and approval of the FOD.

The Center Administrator will ensure that, within 90 days of the adoption of this standard, written policies and procedures are in place, and that the Center is in full compliance with its requirements and guidelines. The Center must meet all other requirements in this standard on the date the standard is adopted.

Each Center also will post its protocols on its website, if it has one, or otherwise make the protocol available to the public.

### B. Acts of SAA

For the purposes of this standard, the following definitions apply:

#### 1. Resident-on-Resident SAA

SAA of a resident by another resident includes any of the following acts by one or more residents who, by force, coercion, or intimidation, or if the victim did not consent or was unable to consent or refuse, engages in or attempts to engage in:

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration, however slight, of the anal or genital opening of another person by a hand, finger, or any object;
- Touching of the genitalia, anus, groin, breast, inner thighs, or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person; or
- Threats, intimidation, or other actions or communications by one or more residents aimed at coercing or pressuring another resident to engage in a sexual act.

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- Repeated verbal statements or comments of a sexual nature to a resident.

### **2. Staff-on-Resident SAA**

SAA of a resident by a staff member, contractor, or volunteer includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the resident, engages in or attempts to engage in:

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration, however slight, of the anal or genital opening of another person by a hand, finger, or any object that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Intentional touching of the genitalia, anus, groin, breast, inner thighs, or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Threats; intimidation; harassment; indecent, profane, or abusive language; or other actions or communications aimed at coercing or pressuring a resident to engage in a sexual act;
- Repeated verbal statements or comments of a sexual nature to a resident;
- Any display by a staff member, contractor, or volunteer of his/her uncovered genitalia, buttocks, or breast in the presence of a resident; or
- Voyeurism, which is defined as the inappropriate visual surveillance of a resident for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a resident who is using a toilet in his/her cell to perform bodily functions; requiring a resident to expose his/her buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of a resident performing bodily functions.

### **C. PSA Compliance Manager**

The Center Administrator will designate a PSA Compliance Manager who will serve as the Center point of contact for the ICE PSA Coordinator and who has sufficient time and authority to oversee Center efforts to comply with Center SAAP policy and procedures. The PSA Compliance Manager will:

- Assist with the development of written policies and procedures for the SAAP program, as specified above in this standard, and with keeping them current;
- Assist with developing initial and ongoing training;
- Serve as a liaison with other agencies;
- Coordinate the gathering of statistics and reports on incidents of SAA, as detailed in the Data Collection section in this standard;

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- Review the results of every investigation of SAA and assist in conducting an annual review of all investigations in compliance with the Privacy Act to assess and improve prevention and response efforts; and
- Review Center practices to ensure required levels of confidentiality are maintained.

### **D. Sexual Conduct between Residents Prohibited**

In addition to the forms of SAA defined above, all other sexual conduct—including consensual sexual conduct—between adult residents is prohibited and subject to disciplinary sanctions. However, staff should be sensitive to the possibility that seemingly consensual behavior may have involved coercion by either person involved.

Consensual sexual conduct between residents and staff, volunteers, or contract personnel is prohibited and is included within the definition of staff-on-resident SAA above.

### **E. Staff Training and Hiring**

Training on the Center's SAAP program will be included in training for all employees and will be included in annual refresher training thereafter.

Employee training will include:

- ICE and the Center's zero-tolerance policy for all forms of SAA;
- Definitions and examples of prohibited and illegal sexual behavior;
- The right of residents and staff to be free from SAA, and from retaliation for reporting SAA;
- Instruction that SAA is never an acceptable consequence of detention;
- Recognition of situations where SAA may occur;
- How to avoid inappropriate relationships with residents;
- Working with vulnerable populations and addressing their potential vulnerability in the general population;
- Recognition of the physical, behavioral, and emotional signs of SAA, and ways to prevent and respond to such occurrences;
- The requirement to limit reporting of SAA to personnel with a need-to-know to make decisions concerning the resident-victim's welfare, and for law enforcement/investigative purposes;
- The investigation process and how to ensure that evidence is not destroyed;
- Prevention, recognition, and appropriate response to allegations or suspicions of SAA involving residents with mental or physical disabilities;
- How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents;
- Instruction on reporting knowledge or suspicion of SAA; and

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- Instruction on documentation and referral procedures of all allegations or suspicion of SAA.

The Center will ensure that all volunteers and other contractors who have contact with residents have been trained on their responsibilities under the Center's SAA prevention, detection, intervention, and response policies and procedures. The level and type of training for volunteers and contractors will be based on the services they provide and their level of contact with residents; however, all volunteers and contractors who have any contact with residents must be notified of the Center's zero-tolerance policy and informed how to report such incidents. In this paragraph, "other contractor" means a person who provides services on a nonrecurring basis to the Center pursuant to a contractual agreement with ICE or the Center.

The Center must maintain written documentation verifying employee, volunteer, and contractor training in accordance with the ICE Family Residential Standard on *Staff Training*.

Additionally, the Center will provide specialized training on SAA, and effective cross-agency coordination to Center investigators who conduct investigations into Center allegations of SAA. This training must cover, at a minimum, interviewing SAA victims, SAA evidence collection in confinement settings, the criteria and evidence required for administrative action or prosecutorial referral, and information about effective cross-agency coordination in the investigation process. The Center must maintain written documentation verifying specialized training provided to investigators pursuant to this paragraph.

Center medical staff will be trained in procedures for examining and treating victims of SAA, in Centers where medical staff may be assigned these activities. This training will be subject to the review and approval of the FOD or other designated ICE official.

The training will cover, at a minimum, the following topics:

- How to detect and assess signs of SAA;
- How to respond effectively and professionally to victims of SAA; and
- How to preserve physical evidence of SAA. If medical staff employed by ICE conduct forensic examinations, then such medical staff will receive appropriate training to conduct such examinations.

Hiring practices will follow the process defined in the ICE Family Residential Standard on *Staff Training*.

### F. Resident Notification, Orientation, and Instruction

The Center Administrator will ensure that the orientation program and the resident handbook and local supplement notify and inform residents about ICE's and the Center's zero-tolerance policy for all forms of SAA. Centers will maintain documentation of resident participation in the intake process orientation.

The Center's SAAP program resident notification, orientation, and instruction will include (at a minimum):

- The Center's zero-tolerance policy for all forms of SAA;



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- Prevention and intervention strategies;
- Definitions and examples of resident-on-resident SAA, staff-on-resident SAA, and coercive sexual activity;
- An explanation of methods for reporting SAA, including reporting to one or more staff members other than an immediate point-of-contact line staff, the Detention and Reporting Information Line, the U.S. Department of Homeland Security (DHS)/Office of Inspector General (OIG) and the ICE/Office of Professional Responsibility (OPR) investigation processes;
- Information about self-protection and indicators of SAA;
- Prohibition against retaliation, including an explanation that reporting SAA will not impact the resident's immigration proceedings negatively; and
- Resident treatment and counseling rights for residents who have been subjected to SAA.

The Center will develop policies and procedures to ensure that residents have multiple private ways to report SAA, retaliation for reporting SAA, or staff misconduct or violations of responsibilities that may have contributed to such incidents.

Each Center's SAAP program will provide residents the option to report any incident or situation regarding SAA or intimidation to a designated staff member other than an immediate point-of-contact line staff (e.g., the Program Coordinator or a mental health specialist). The Center will provide residents with the name of the Program Coordinator or designated staff member and information on how to contact him/her.

The Center will provide instructions on how residents may contact their consular official, the DHS/OIG, the Joint Intake Center (JIC), or, as appropriate, another designated office to report these incidents confidentially and, if desired, anonymously.

The Center will inform residents of at least one way for residents to report SAA to a public or private entity or office that is not part of ICE, and that is able to receive and forward resident reports of SAA immediately to ICE officials, allowing the resident to remain anonymous upon request. ICE/ERO has provided a sexual assault awareness notice to be posted on all Resident Information Center bulletin boards, as well as a "Sexual Assault Awareness Information" pamphlet to be distributed. The Center will post with this notice the name of the PSA Compliance Manager and information about local organizations that can assist residents who have been victims of SAA, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, then the Center will make available the same information about national organizations. This information will be provided in English and Spanish, and to other segments of the resident population with limited English proficiency, through translations or oral interpretation.

### **G. Victim Advocate Services**

Each Center will utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation, and the prosecution of SAA

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perpetrators to address victims' needs most appropriately. Each Center Administrator will establish procedures to make available, to the full extent possible, outside victim services following incidents of SAA. The Center also will attempt to make available such victim services for any individuals identified as having experienced sexual victimization prior to entering DHS custody.

The Center Administrator will maintain or attempt to enter into memoranda of understanding or other agreements with community service providers or, if local providers are not available, with national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime. The Center will enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible. The Center also will inform residents, prior to giving them access to outside resources, of the extent to which such communications will be monitored and the extent to which reports of SAA will be forwarded to authorities in accordance with mandatory reporting laws.

### H. Prevention

All staff and residents are responsible for being alert to signs of potential situations in which SAA might occur, and for making reports and intervention referrals as appropriate. If a Center staff member has a belief that a resident is subject to a substantial risk of imminent SAA, then he/she will take immediate action to protect the resident by removing the resident from the potential situation and reporting to his/her first-line supervisor, who will take further action and notify management.

#### 1. Classification and Screening

In accordance with the ICE Family Residential Standard on *Admission and Release*, the Center will assess all residents on intake to identify those likely to be sexual aggressors or SAA victims and will house residents to prevent SAA, taking necessary steps to mitigate any such danger. The Center also will use the information to inform assignment of residents to activities and voluntary work.

Each new arrival will be kept separate from the general population until he/she is classified and may be housed accordingly.

The Center will consider, to the extent that the information is available, the following criteria to assess residents for risk of sexual victimization:

- Whether the resident has a mental, physical, or developmental disability;
- The age of the resident;
- The physical build and appearance of the resident;
- Whether the resident has been incarcerated or detained previously;
- The nature of the resident's criminal history;
- Whether the resident has any convictions for sex offenses against an adult or minor;
- Whether the resident has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

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- Whether the resident has self-identified as having experienced sexual victimization previously; and
- The resident's own concerns about his/her physical safety.

The initial screening will consider prior acts of SAA, prior convictions for violent offenses, and history of prior institutional violence or SAA, as known to the Center, in assessing residents for risk of sexual victimization.

Residents will not be disciplined for refusing to answer, or for not disclosing complete information in response to questions asked pursuant to items above.

The Center will implement appropriate controls on the dissemination within the Center of responses to questions asked pursuant to this screening to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

### 2. Supervision and Monitoring

Centers will ensure that they maintain sufficient supervision of residents, including through appropriate staffing levels and, where applicable, video monitoring, to protect residents against SAA.

Centers will develop and document comprehensive supervision guidelines to determine and meet supervision needs, and will review those guidelines at least annually.

In determining adequate levels of supervision and determining the need for video monitoring, the Center will take into consideration:

- Generally accepted practices;
- Any judicial findings of inadequacy;
- The physical layout of each Center;
- The composition of the population;
- The prevalence of substantiated and unsubstantiated incidents of SAA;
- The findings and recommendations of SAA incident review reports; and
- Any other relevant factors, including but not limited to the length of time spent in residence.

### 3. Transportation

Residents identified as being at risk for sexual victimization will be transported in accordance with the ICE Family Residential Standard on *Transportation (by Land)*.

### 4. Upgrades to Facilities and Technologies

When designing or acquiring any new Center and in planning any substantial expansion or modification of existing facilities, the Center will consider the effect of the design, acquisition, expansion, or modification upon its ability to protect residents from SAA.

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When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a Center, the Center will consider how such technology may enhance its ability to protect residents from SAA.

### **I. Prompt and Effective Intervention**

Staff sensitivity toward residents who are victims of SAA is critical.

Staff will take seriously all statements from residents claiming to be victims of SAA and will respond supportively and nonjudgmentally. Any resident who alleges that he/she has been sexually abused or assaulted will be offered immediate protection and separation from the assailant and will be referred for an age-appropriate medical examination and/or clinical assessment for potential negative symptoms. Staff members who become aware of an alleged SAA immediately will follow the reporting requirements set forth in the written policies and procedures.

If a victim is transferred between Centers, then the sending Center will, as permitted by law, inform the receiving Center of the incident and the victim's potential need for medical or social services (unless, in the case of transfer to a non-ICE Center, the victim requests otherwise). If the receiving Center is unknown to the sending Center, then the sending Center will notify the FOD, so that he/she can notify the receiving Center.

Centers should use a coordinated, multidisciplinary team approach to responding to SAA, such as a sexual assault response team, which in accordance with community practices, includes a medical practitioner, a mental health practitioner, a security staff member, and an investigator from the assigned investigative entity, as well as representatives from outside entities that provide relevant services and expertise. The Center will attempt to make available to the victim a victim advocate from a rape crisis center to provide age-appropriate interventions. If a rape crisis center is not available to provide victim advocate services, then ICE will provide these services by making available a qualified staff member from a community-based organization, or a qualified ICE staff member. A qualified ICE staff member or a qualified community-based staff member means an individual who has received education concerning SAA and forensic examination issues in general. The outside or internal victim advocate will provide emotional support, crisis intervention, information, and referrals.

### **J. Protection Against Retaliation**

Staff, contractors, volunteers, and residents will not retaliate against any person, including a resident, who reports, complains about, or participates in an investigation into an allegation of SAA, or for participating in SAA as a result of force, coercion, threats, or fear of force.

The Center will employ multiple protection measures, such as housing changes, removal of suspected staff or removal of alleged resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting SAA or for cooperating with investigations.

For at least 90 days following a report of SAA, the Center will monitor to see if there are facts that may suggest possible retaliation by residents or staff, and will act promptly to remedy any such retaliation. Items the Center should monitor include any resident disciplinary reports, housing or

## **2.7 Sexual Abuse and Assault Prevention and Intervention**

program changes, or negative performance reviews or reassignments of staff. The Center will continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

### **K. Reporting, Notifications, and Confidentiality**

Each Center will require all staff to report immediately any knowledge, suspicion, or information regarding an incident of SAA that occurred in a Center; retaliation against residents or staff who reported such an incident; and any staff misconduct or violation of responsibilities that may have contributed to an incident or retaliation.

Staff members who become aware of alleged SAA immediately will follow the reporting requirements set forth in the Center's written policies and procedures.

Apart from such reporting, staff will not reveal any information related to an SAA report to anyone other than to the extent necessary to: help protect the safety of the victim or prevent further victimization of other residents or staff in the Center; or make medical treatment, investigation, law enforcement, or other security and management decisions.

If the alleged victim is under 18 years of age or considered a vulnerable adult under a State or local vulnerable persons statute, then the Center will report that information to the FOD and to the designated State or local services agency under applicable mandatory reporting laws.

Staff will accept reports made verbally, in writing, anonymously, and from third parties, and promptly document any verbal reports.

Each Center will establish a method to receive third-party reports of SAA in its Center and will make available to the public information on how to report SAA on behalf of a resident.

#### **1. Alleged Resident Perpetrator**

When a resident is alleged to be the perpetrator, it is the Center Administrator's responsibility to ensure that the incident is referred promptly to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and the FOD, who will report to the ICE/OPR or the DHS/OIG, and the OPR JIC as appropriate.

#### **2. Alleged Staff Perpetrator**

When an employee, contractor, or volunteer is alleged to be the perpetrator of resident SAA, it is the Center Administrator's responsibility to ensure that the incident is referred promptly to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and the FOD, who will report to the ICE/OPR, the DHS/OIG, and the OPR JIC as appropriate. The local government entity or contractor that owns or operates the Center also will be notified.

Staff, contractors, and volunteers suspected of perpetrating SAA will be removed from all duties requiring resident contact pending the outcome of an investigation.

Upon receiving an allegation that a resident was sexually abused or assaulted while confined at another Center, the Center whose staff received the allegation will notify the FOD and the appropriate Administrator of the Center where the alleged SAA occurred. The notification provided in this section will be provided as soon as possible, but no later than 72 hours after receiving the

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allegation. The Center will document that it has provided such notification. The Center where the alleged SAA occurred then will ensure the allegation is referred for investigation and reported to the appropriate FOD in accordance with this standard.

### **L. Investigation, Discipline, and Incident Reviews**

If a resident alleges SAA, then a sensitive and coordinated response is necessary. The Center will coordinate with ICE and other appropriate investigative agencies to ensure that an administrative or criminal investigation is completed for all allegations of SAA.

All investigations into alleged SAA must be prompt, thorough, and objective, and conducted by specially trained, qualified investigators.

Where an alleged victim of SAA that occurred elsewhere subsequently is transferred to the Center, the Center will cooperate with any administrative or criminal investigative efforts arising from the incident.

#### **1. Preservation of Evidence**

The first staff member to respond to a report of SAA or his/her supervisor will preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence. The responder will request the alleged victim not take any actions, and will ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

#### **2. Forensic Examinations**

Where evidentiary or medically appropriate, at no cost to the resident, and only with the resident's consent, the Center Administrator will arrange for an alleged victim to undergo an age-appropriate forensic medical examination by qualified health care personnel, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, then the examination can be performed by other qualified health care personnel.

As requested by a victim, the presence of his/her outside or internal victim advocate, including any available victim advocacy services offered by a hospital conducting a forensic exam, will be allowed for support during a forensic exam and investigatory interviews.

The results of the physical examination and all collected physical evidence are to be provided to the investigative entity. Part of the investigative process also may include an examination and collection of physical evidence from the suspected assailant(s). Upon completion of the investigation, a final report will be provided to the PSA Compliance Manager, the Juvenile and Family Residential Management Unit Chief, and the respective FOD. Under no circumstances should Center staff conduct the forensic exams.

In the event the investigation is being conducted by a non-Federal investigating agency, the Center will request that the investigating agency follow the applicable requirements of this standard, including subsections 1 and 2 of this section.



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### 3. Procedures for Administrative Investigations

Upon conclusion of a criminal investigation where the allegation was substantiated or in instances where no criminal investigation has been completed, an administrative investigation will be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the Center will review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. "Substantiated allegation" means an allegation that was investigated and determined to have occurred. "Unsubstantiated allegation" means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Administrative investigations will be conducted after consultation with the appropriate investigative office within DHS, and the assigned criminal investigative entity. The ICE/OPR typically will be the appropriate investigative office within DHS, as well as the DHS/OIG in cases where the DHS/OIG is conducting an investigation.

To the extent the Center conducts SAAPI investigations, it will develop written procedures for administrative investigations, including provisions requiring:

- The investigator to have received specialized training in accordance with this standard;
- Preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
- Interviews of alleged victims (as appropriate), suspected perpetrators, and witnesses;
- Review of prior complaints and reports of SAA involving the suspected perpetrator;
- Assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual's status as resident, staff, or employee, and without requiring any resident who alleges SAA to submit to a polygraph;
- Investigation to determine whether actions or failures to act at the Center contributed to the SAA;
- Documentation of each investigation by written report, which will include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings; and
- Retention of such reports for as long as the alleged abuser or assailant is detained or employed by ICE or the Center, plus five years.

Such procedures will govern the coordination and sequencing of administrative and criminal investigations, in accordance with the first paragraph of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.

The departure of the alleged abuser or victim from the employment or control of the Center will not provide a basis for terminating an investigation.

When outside agencies investigate SAA, the Center will cooperate with outside investigators and will endeavor to remain informed about the progress of the investigation.



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Following an investigation conducted by the Center into a resident's allegation of SAA, the Center will notify the FOD of the results of the investigation and any responsive actions taken so that the information can be reported to ICE headquarters and to the resident.

### 4. Discipline

**Disciplinary Sanctions for Staff.** Staff will be subject to disciplinary or adverse action up to and including removal from their position for substantiated allegations of SAA or for violating ICE or Center SAA rules, policies, or standards. Removal from their position is the presumptive disciplinary sanction for staff who has engaged in or attempted or threatened to engage in SAA, as defined under the definition of staff-on-resident SAA in this standard.

ICE and the Center will report all incidents of substantiated SAA by staff, and all removals of staff, or resignations in lieu of removal for violations of ICE or Center SAA policies, to appropriate law enforcement agencies unless the activity clearly was not criminal.

The Center also will report all such incidents of substantiated SAA, removals, or resignations in lieu of removal to the FOD, regardless of whether the activity was criminal, and will make reasonable efforts to report such information to any relevant licensing bodies, to the extent known.

**Corrective Action for Contractors and Volunteers.** Any contractor or volunteer who has engaged in SAA will be prohibited from contact with residents. The Center will take appropriate remedial measures and will consider whether to prohibit further contact with residents by contractors or volunteers who have not engaged in SAA, but have violated other provisions within these standards.

Incidents of substantiated SAA by a contractor or volunteer will be reported to law enforcement agencies, unless the activity clearly was not criminal. The Center also will report such incidents to the FOD regardless of whether the activity was criminal and will make reasonable efforts to report such incidents to any relevant licensing bodies, to the extent known.

**Disciplinary Sanctions for Residents.** Residents will be subjected to disciplinary sanctions pursuant to a formal disciplinary process following an administrative or criminal finding that the resident engaged in SAA, consistent with the requirements in the ICE Family Residential Standard on *Behavior Management*. The Center will not discipline a resident for sexual contact with staff unless there is a finding that the staff member did not consent to such contact. For the purpose of disciplinary action, a report of SAA made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

### 5. SAA Incident Reviews

Each Center will conduct an SAA incident review at the conclusion of every investigation of SAA and, where the allegation was not determined to be unfounded, prepare a written report within 30 days of the conclusion of the investigation recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to SAA. Unfounded allegation means an allegation that was investigated and determined not to have occurred. The Center will implement the recommendations for improvement or will document its

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reasons for not doing so in a written response. Both the report and response will be forwarded to the FOD or his/her designee, for transmission to the ICE PSA Coordinator. The Center also will provide any further information regarding such incident reviews as requested by the ICE PSA Coordinator.

The review team will consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, intersex, or gender nonconforming identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the Center.

Each Center will conduct an annual review of all SAA investigations and resulting incident reviews to assess and improve SAA intervention, prevention, and response efforts. If the Center has not had any reports of SAA during the annual reporting period, then the Center will prepare a negative report. The results and findings of the annual review will be provided to the Center Administrator and FOD or his/her designee, for transmission to the ICE PSA Coordinator.

### **M. Medical and Mental Health Care**

Resident victims of SAA will be provided emergency medical and mental health services and ongoing care. All treatment services, both emergency and ongoing, will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. Consent for minors will be in accordance with the ICE Family Residential Standard on *Health Care* and *Health Care (Females)* and in conjunction with state licensing requirements.

#### **1. Access to Emergency Medical and Mental Health Services**

Resident victims of SAA will have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.

Where evidentiary or medically appropriate, the Center Administrator will arrange for an alleged victim to undergo a forensic medical examination, in accordance with the requirements of this standard.

Transportation of an alleged victim for emergency care or other services provided off-site will be arranged in a manner that takes into account the special needs of victimized residents.

#### **2. Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers**

Each Center will offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by SAA while in residence.

The evaluation and treatment of such victims will include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their discharge.

The Center will provide such victims with medical and mental health services consistent with the community level of care.

## 2.7 Sexual Abuse and Assault Prevention and Intervention

Resident victims of vaginal penetration by a male abuser while in residence will be offered pregnancy tests. If pregnancy results, then the victim will receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

Resident victims of SAA while in residence will be offered tests for sexually transmitted infections as medically appropriate.

The Center will attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

### N. Data Collection

Each Center will maintain in a secure area all case records associated with allegations of SAA, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment, if necessary. Any counseling and documentation will be maintained in appropriate files in accordance with these standards and applicable policies, and retained in accordance with the ICE Family Residential Standard on *Resident Files*.

Particularly applicable to the storage, confidentiality, and release of case records are the requirements of the Confidentiality and Release of Medical Records section in the ICE Family Residential Standard on *Health Care* and the requirements of ICE Family Residential Standard on *Resident Files*, especially in regard to the Privacy Act of 1974. Because of the very sensitive nature of information about victims and their medical condition, including infectious disease testing, staff must be particularly vigilant about maintaining confidentiality and releasing information only for legitimate need-to-know reasons.

Monitoring and evaluation are essential for assessing both the rate of occurrence of SAA and the effectiveness in reducing SAA behavior. Accordingly, the Center Administrator must maintain two types of files of SAA incidents that include the following minimum information in general files:

- The victim(s) and assailant(s) of an SAA;
- The date, time, location, and nature of the incident;
- The demographic background of the victim and perpetrator (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming);
- Detailed reporting timeline, including the names of the individuals who reported the incident and received the report of SAA, date and time the report was received, and steps taken to communicate the report up the chain of command;
- Any injuries sustained by the victim;
- All formal and/or informal action taken, including all post-report follow-up response taken by the Center (housing placement/custody classification, medical examination, mental health counseling, etc.);
- All reports;

## 2.7 Sexual Abuse and Assault Prevention and Intervention

- Medical forms or other relevant medical information;
- Supporting memos and videotapes, if any;
- Any sanctions imposed on the perpetrator; and
- Any other evidentiary materials pertaining to the allegation.

The Center Administrator will maintain these files chronologically in a secure location.

In addition, the Center Administrator will maintain a listing of the names of SAA victims and assailants, along with the dates and locations of all SAA incidents occurring within the Center, in an incident reporting system. Such information will be maintained on a need-to-know basis in accordance with the ICE Family Residential Standards on *Health Care* and on *Resident Files*, which includes protection of electronic files from unauthorized access. At no time may law enforcement sensitive documents or evidence be stored at the Center. Access to this designation will be limited to those staff involved in the treatment of the victim or the investigation of the incident. The authorized designation will allow appropriate staff to track the resident victim or assailant of SAA across the system.

On an ongoing basis, the Center PSA Compliance Manager and Center Administrator must work with the Field Office and ICE PSA Coordinator to share data regarding SAA incidents and response.

### O. Center Audits

Centers will cooperate with all audits of the Center's compliance with this standard, including by making available relevant documents, records, and other information as requested (including available videotapes and other electronically available data).

Centers will permit auditors access to all areas of the Center and will make available space suitable for interviews of residents and staff. Residents will be permitted to have private interviews with auditors, and to send confidential information or correspondence to the auditor.

## References

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Behavior Management
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Health Care (Females)
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Files
- ICE Family Residential Standard on Staff Training
- ICE Family Residential Standard on Transportation (by Land)

## 2.8 Staff-Resident Communication

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard enhances safe and secure Center operations by encouraging and requiring informal direct verbal and written contact among staff and residents and informal supervisory observation of living and working conditions, and by ensuring that the U.S. Department of Homeland Security's (DHS)/Office of the Inspector General's (OIG) hotline informational notices are posted.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents will have frequent opportunities for informal contact with Center managerial and supervisory staff and with ICE/Enforcement and Removal Operations (ERO) Field Office staff.
2. Center managerial and supervisory staff and ICE/ERO Field Office staff will observe Center operations and conditions of confinement directly.
3. Residents will be able to submit, in their native language if necessary, written questions, requests, grievances, and concerns to ICE/ERO staff and receive timely responses in their native language.
4. Centers will inform residents how to contact OIG directly.

## 2.8 Staff-Resident Communication

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Staff-Resident Communication* dated 12/21/2007.

### Expected Practices

#### A. Staff and Resident Contact

Residents will have opportunities for frequent, informal access to and will have interactions with Center and ICE/ERO staff, in a language they can understand. As detailed below, the respective Field Office will assign Deportation Officers and ICE/ERO managers to visit and monitor Centers. Center staff will not restrict resident communications with ICE/ERO staff for any reason.

ICE/ERO managers will conduct unannounced, unscheduled visits once a week to the Center's living and activity areas to observe living conditions informally as well as engage in informal communication with residents.

In addition to conducting (at least weekly) unannounced and unscheduled visits, ICE/ERO Deportation Officers will conduct weekly "open door" resident meetings to address any concerns and answer questions regarding immigration issues. ICE/ERO will develop written weekly visit schedules and ensure they are posted in the Resident Information Center.

During all visits, ICE/ERO staff will observe:

- Living and activity areas;
- Classrooms;
- Food service areas (during meals);
- Recreation areas; and
- Medical areas.

ICE/ERO staff members will announce their presence upon arrival in each area.

ICE/ERO will document all Center visits in the appropriate Center log.

The resident handbook and local supplement as appropriate will include contact information for the ICE/ERO Field Office.

#### B. Staff Observation

When Center or ICE/ERO staff observes residents with visible injuries, bruising, signs of illness, depression, or changes in overall demeanor, they will immediately report their observations to their supervisor, the health care provider, and the Juvenile and Family Residential Management Unit (JFRMU) Onsite Coordinator.

## **2.8 Staff-Resident Communication**

### **C. Daily Announcements**

Centers will establish daily scheduled announcements to provide pertinent information on programming and scheduling activities.

### **D. Town Hall Meetings**

Centers will establish regularly scheduled meetings between staff and residents to discuss all aspects of Center operations. The town hall meeting will occur at least once a month during school hours to limit the number of children requiring supervision. All adult residents will be encouraged to attend town hall meetings. These meetings allow residents and department heads to discuss any changes in operations, upcoming events, and other topics. The following staff will attend town hall meetings:

- JFRMU Onsite Coordinator;
- ICE/ERO supervisory staff assigned to the Center;
- Center health care provider/Health Services Administrator;
- Center Administrator; and
- Shift Supervisor.

The ICE/ERO supervisory staff, JFRMU Onsite Coordinator, or Center Administrator may request other department supervisors attend the meeting based on the meeting agenda or residents' requests for information.

Staff will maintain minutes of each town hall meeting. Minutes will be posted in the Resident Information Center in Spanish and in the prominent languages of most residents with Limited English Proficiency (LEP), where practicable.

### **E. Written Resident Requests to Staff**

Residents may submit written questions, requests, or concerns to Center or ICE/ERO staff, using the "Resident Request" form or its equivalent.

Such informal written requests are not intended as a substitute for the more formal process specified in the ICE Family Residential Standard on *Grievance System*. However, informal written requests may be used to resolve informal grievances, as described in that standard.

To prepare a written request, a resident may obtain assistance from another resident, the housing staff, or other Center staff and may, if he/she chooses, seal the request in an envelope that is addressed clearly with name, title, and/or office to which the request will be forwarded.

Each Center Administrator will:

- Ensure that adequate supplies of "Resident Request" forms, envelopes, and writing implements are readily available;
- Establish written procedures for authorized staff to route/deliver resident requests promptly to the appropriate ICE/ERO official while ensuring that requests are not read, altered, or delayed; and



## 2.8 Staff-Resident Communication

- Provide secure, labeled drop-boxes in each living and activity area (at a minimum) for residents to correspond directly with Center staff. Residents will not have access to the requests put in the drop-boxes.

Centers also must allow any ICE/ERO resident dissatisfied with the Center's response to file a grievance appeal and communicate directly with ICE/ERO freely, without harassment or retribution.

### 1. Response Times

In Centers with ICE/ERO Onsite Presence: The ICE/ERO staff member receiving the request will respond in person or in writing, in the resident's native language, normally as soon as possible and practicable, but no later than within three business days of receipt.

In Centers without ICE/ERO Onsite Presence: Each resident request will be forwarded to the ICE/ERO office of jurisdiction within two business days and answered in the resident's native language as soon as practicable, in person or in writing, but no later than within three business days of receipt. All dates will be documented.

### 2. Record Keeping and File Maintenance

Both the Center and ICE/ERO will record in and maintain a logbook (or electronic logbook) specifically designed to document resident requests. At a minimum, the log will record:

- Date of receipt;
- Resident's name;
- Resident's alien number;
- Name of the staff member who logged the request;
- Date that the request, with staff response and action, was returned to the resident;
- The nature or purpose of the request;
- Specific reasons if the resident's request is urgent and requires a faster response; and
- Centers will log the date immigration-related requests were forwarded to ERO; ERO will log the date they received the request from the Center.

A copy of each completed resident request will be filed in the resident's file and retained in accordance with the ICE Family Residential Standard on *Resident Files*. Copies of ICE/ERO-related requests will be maintained in the resident's alien file.

### 3. Resident Handbook

As required by the ICE Family Residential Standard on *Resident Handbook*, each Center's resident handbook and local supplement as appropriate will advise residents in a language or manner that they understand of the procedures to submit written questions, requests, or concerns to ICE/ERO staff, as well as the availability of assistance to prepare such requests.

## **2.8 Staff-Resident Communication**

### **F. OIG Hotline Informational Posters**

DHS/OIG periodically revises a “DHS/OIG Hotline” poster, which is to be posted in Centers that house ICE/ERO residents.

Field Office Directors will distribute sufficient numbers of the posters to all Centers. Each Field Office will maintain a master copy from which additional copies may be duplicated as needed.

The Center Administrator will ensure that posters are mounted in housing and activity areas (e.g., living/recreation areas, dining areas, processing areas).

During staff-resident communication visits, ICE/ERO staff will verify the presence of posters in the areas listed above and will ensure that any missing or destroyed posters are replaced as soon as possible.

## **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Grievance System
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Files
- ICE Family Residential Standard on Resident Handbook

## 2.9 Tool Control

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects residents, staff, contractors, and volunteers from harm and contributes to orderly Center operations by maintaining control of tools, culinary utensils, and medical and dental instruments, equipment, and supplies to ensure accountability and prevent misuse.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers will continually control and account for tools, maintenance implements, culinary utensils (not including basic eating utensils), and medical and dental instruments, equipment, and supplies (particularly syringes, needles, and other sharp objects) to ensure the safe and orderly operation of the Center.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Tool Control* dated 12/21/2007.

## **Expected Practices**

### **A. Control, Care, and Accountability for Tools**

Tools, maintenance implements, culinary utensils (not basic eating utensils), and medical and dental instruments, equipment, and supplies (particularly syringes, needles, and other sharp objects) must be controlled and their use by residents must be supervised.

Tool control and care ensures the following:

- Prevents the use of tools as weapons, and in other ways that can be hazardous to individual safety or safe and secure Center operations;
- Improves the appearance of shop and construction areas;
- Ensures that tools are in good repair when needed;
- Reduces costs of tool maintenance and inventory; and
- Instructs resident workers on principles of tool accountability and responsibility.

### **B. Written Policy and Procedures Required**

Each Center Administrator will develop and implement a written tool control system that:

- Identifies a staff position responsible;
- Develops and implements an accountability system for tool control procedures; and
- Establishes an inspection system to ensure accountability.

The Center Administrator will delegate these responsibilities to the security staff and also will assign, in writing:

- The duties of tool control to a staff member of the Center maintenance department;
- A tool classification system;
- Individual tool inventories for all departments that have tools stored in their work or storage areas;
- Procedures for marking tools so they are readily identifiable;
- Procedures for storing tools;
- Procedures and schedules for regular inventories of tools;
- Procedures for documenting tool distribution to staff and resident workers;
- Procedures governing lost tools;
- Procedures to control ladders, extension cords, and ropes;
- Procedures for surveying and destroying excess, broken, or worn out tools; and
- Procedures for inspecting and controlling tools and equipment brought into the Center temporarily (e.g., repair and maintenance workers, sports teams).

### **C. Tool Classification**

The Center will develop and implement a tool classification system. Tools are assigned one of two categories:

- Restricted (class “R”)—dangerous/hazardous tools; and
- Non-restricted—non-hazardous tools.

Class “R” tools include:

- Tools too dangerous for residents to handle without constant staff supervision;
- Tools to which resident access is prohibited;
- Tools that are useful in making weapons, could double as weapons, or are capable of causing serious bodily harm;
- Power hand tools, with or without cords; and
- Other tools that are considered hazardous to safe and secure Center operations or personal safety.

Examples of restricted tools include:

- Metal cutting blades;
- Mixing chambers;
- Bolt cutters;
- Diamond-tipped tools;
- Core drills;
- Drills;
- Circular saws; and
- Knives and other sharp culinary utensils.

The Center Administrator will establish a policy document on Center tool use and storage that includes separate, comprehensive, alphabetical lists of both restricted and non-restricted tools.

The lists will indicate which of the listed tools are available onsite, describe them by type, and specify tool sizes.

The lists will be kept current by formatting them as attachments to the policy document, and will be maintained and updated electronically weekly.

The lists will be kept current and will be distributed at least quarterly.

Tools included in tool sets and tools sized sequentially in standard increments may appear as a single listing. For example:

- Drill bits, metal/wood 1/32–7/8 inch;
- Drill bits, metal/wood 7/16–7/8 inch;

**2.9 Tool Control**

- Wrench, combination box/open end 1/4–7/16 inch; or
- Wrench, combination box/open end 7/16–7/8 inch.

When a single set listing is insufficiently clear, each tool must be listed separately. For example, if a Center had:

- A single “wrench, combination box/open end, 1-7/8 inches” but not the smaller or larger sizes; or
- Several wrenches in different sizes, but without standard size differences.

**D. Daily Removal and Storage of Class “R” Tools**

Staff will remove restricted tools from work areas at the end of each workday for safekeeping in a secure tool room or the control center.

**E. Acetylene**

Staff will:

- Restrict the supply of acetylene entering the Center to the amount needed in a single day; and
- At the end of each workday, store the used and unused acetylene tanks outside the secured perimeter in accordance with applicable codes, standards and regulations (Occupational Safety and Health Administration’s (OSHA) industrial safety regulations, etc.).

**F. Departmental Responsibilities**

At a minimum, the following departments will maintain tool inventories:

- Center maintenance department;
- Medical unit;
- Food service department;
- Electronics shop; and
- Recreation department.

Each department head is responsible for implementing tool control procedures in that department, and the following procedures are specifically required of the Center Maintenance Department Head, Health Services Administrator (HSA), food service manager, electronics technician, and recreation specialist.

- Prepare a computer-generated inventory of all class “R” tools in the maintenance restricted-tool room, the medical unit, the food service department, the electronics work area, and recreation areas;
- Post a copy of the class “R” tool inventory with the equipment in a prominent position in the equipment area;

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- Submit a second copy of the inventory to the security staff;
- Retain a third copy in the department;
- Review and when necessary revise the class “R” tool inventory on a regular schedule:
  - Weekly—food service;
  - Monthly—Center maintenance, medical; and
  - Quarterly—electronics work area, recreation areas.
- Forward a copy of the inventory report to the Center Administrator;
- Report missing tools in accordance with procedures specified below; and
- Include on all inventory sheets the date of issuance/revision.

**G. Tool Identification**

The Center Administrator will establish written procedures for marking tools and making them readily identifiable.

The tool control staff will mark every tool in every work location with a symbol signifying its storage location (e.g., “kitchen,” “control center”). Some tools will require Automated Movement and Identification System (AMIS) bar-coding.

Tools too small, fragile, or otherwise susceptible to damage (e.g., surgical instruments, micrometers, small drill bits) will be inventoried and kept in locked storage when not in use.

**H. Storage in Work Areas**

The Center Administrator will establish written procedures for a tool-storage system that ensures accountability. Commonly used, mounted tools will be stored so that a tool’s disappearance will be easily visible to staff.

Work-detail supervisors will account for all tools at the end of every work period.

Shadow boards will provide storage for tools that can be mounted, as follows:

- One tool per shadow;
- Tool and shadow identical in size and shape;
- Color-coded:
  - White backgrounds for all shadow boards;
  - Red shadows for restricted tools; and
  - Black shadows for non-restricted tools.
- When a tool is removed from the inventory, its shadow will likewise be removed from the shadow board;
- Shadow boards accessible to residents will have expanded-metal covers and will be locked when not in use;



**2.9 Tool Control**

- All restricted tools will be secured in a central tool room, isolated from the living and activity areas;
- If maintenance workers are assigned personal shadow boards, then the boards must have expanded-metal covers; and
- Infrequently used tools may be stored in individual tool cages with shadow boards, secured by hasp and padlock:
  - They must be included in the regular inventory checks;
  - A tag will indicate the tool has been removed from its cage and a sign-in/out board will indicate area, date, times, and user;
  - The staff member responsible will maintain an inventory sheet in the tool cage and provide a copy to the tool control staff;
  - Tools not adaptable to shadow boards will be kept in a locked drawer or cabinet;
  - Staff will not open sterile packs for inventory or any other non-medical reason, except when tampering or theft is suspected, in which case staff will contact the health services department before opening a pack from which instruments may have been removed. To prevent such incidents, sterile packs will be stored under lock and key at all times; and
  - Individual toolboxes containing tools used on a daily basis must be secured with hasp and padlock. The individual responsible for the toolbox will keep an inventory sheet in the toolbox, and the tool control staff will maintain copies of all such inventory sheets.

**I. Receipt of Tools**

If the warehouse is located outside the secure perimeter, then the warehouse will receive all tool deliveries.

If the warehouse is located within the secure perimeter, then the Center Administrator will develop site-specific procedures (e.g., storing the tools at the rear sally port until picked up and receipted by the tool control staff). The tool control staff will place certain tools (e.g., band saw blades, files, and all restricted tools) immediately in secure storage.

The tool control staff will mark and inventory new tools prior to placing them in service.

Inventories that include any portable power tools will provide brand name, model, size, description, and inventory control/AMIS number.

**J. Tool Inventories**

The Center Administrator will schedule and establish procedures for the quarterly inventorying of all tools. Centers will use inventory control number/AMIS bar code labels as necessary.

Inventory maintenance at each work location is the responsibility of the Detail Supervisor and Department Head.

The Work Detail Supervisor or staff member assigned a toolbox will be accountable for the control of his/her assigned tools on a daily basis.

**2.9 Tool Control**

Any tool permanently removed from service will be turned in to the tool control staff for record keeping and safe disposal.

Tool inventories will be numbered and posted conspicuously on all corresponding shadow boards, toolboxes, and tool kits. While all posted inventories must be accurate, only the Master Tool Inventory Sheet in the office of the security staff requires the certifiers' signatures.

Tools in current use will be inventoried in accordance with the following schedule:

**Annually.** Once each year, at a minimum, the tool control staff and employees responsible for tools will together inventory all tools/equipment onsite.

Each inventory-taker will certify with name, title, and identification number the accuracy of that inventory. Certification must be approved by the Center Maintenance Supervisor and security staff.

The tool control staff will provide security staff a complete set of the separate inventories (e.g., restricted tools, non-restricted tools) referred to as the Master Tool Inventory Sheet.

**Quarterly.** To ensure the accuracy and completeness of current inventory listings and check the condition of shadows and markings, every three months the employees responsible for tools will conduct verification inventories and initial the appropriate column on the Master Tool Inventory Sheet in the office of the security staff.

Security staff will assign one staff member to monitor the quarterly inventories. This person will initial the bottom of each form clearly, certifying that the records have been checked and all inventories completed.

**Inventory Files.** The Center Administrator's designee will maintain a separate file folder for each shop or area where tools are stored.

The left side of the folder will contain the Master Tool Inventory Sheet(s).

When an addition or deletion is made to the master inventory, the page on which the change is made will be retyped or reprinted completely and inserted into the master inventory. Staff will not destroy any of the original pages, but will move them to the right side of the folder for future reference.

The right side of the folder also will contain documentation including, but not limited to:

- Lost or missing tool reports;
- Requests for inventory additions or deletions;
- Survey requests and reports;
- Store room requisition forms; and
- Any other document directly related to site-specific tool control procedures.

When the annual inventory is completed, staff will place the form on the left side of the folder and move the previous year's to the right side. Each folder will contain the materials for the current year plus the preceding two years, with a divider to separate the annual records.

**2.9 Tool Control**

**Tools Used by Contractors.** Staff will conduct and retain an inventory of all contractor tools upon their arrival and departure. Staff will report discrepancies immediately to the shift supervisor. While contractors are temporarily working in the Center, staff will accompany them to ensure that security and safety precautions and procedures are followed at all times. The security staff will establish control procedures, particularly for restricted tools. The security staff, Center Maintenance Supervisor, and Construction Foreman will maintain copies of all such inventories and control procedures.

**Tools Purchased from Surplus Property.** Tools purchased or acquired from surplus property will be stored in the designated secure storage area. The responsible employee will maintain a continual inventory of unmarked or excess tools returned to secure storage for issue or reissue. The tool control staff has sole authority to draw tools from this source. Any such tools kept in the tool control storage area will be registered in a continual inventory.

**Control and Inventory of Certain Items Not Classified as Tools.** Other items that require strict property management controls, like weapons (other than firearms), chemical agents, restraints, other use-of-force and disturbance control equipment, binoculars, communication equipment, and similar items will be inventoried (with serial numbers), maintained, issued, and disposed of in accordance with the procedures for tools established herein.

Control, inventory, maintenance, and destruction of ICE firearms are governed by the ICE Interim Firearms Policy (7/7/2004).

**Tool and Equipment Accountability.** All tools and equipment will be accounted for and documented on a regular basis.

## **K. Issuing Tools**

Each Center will have procedures in place for the issuance of tools to staff and residents; security issues of restricted and unrestricted tools; and control of ladders, extension cords, ropes, and hoses.

The security staff will issue a restricted tool only to the individual who will be using it.

Residents may use non-restricted tools under intermittent supervision; however, the detail supervisor will account for all tools at the end of every work period.

A metal or plastic chit receipt will be taken for all tools issued, and when a tool is issued from a shadow board, the receipt chit will be visible on the shadow board.

The Center Administrator will establish site-specific procedures for the control of ladders, extension cords, ropes, and hoses, according to the following procedures:

- All ladders, extension cords, ropes, and hoses over three feet long will be stored in the designated location when not in use;
- Every staff member supervising the use of an extension ladder and/or heavy equipment will have at his/her disposal a portable two-way radio;
- Ladders will be inventoried and stored by size to facilitate inspection and handling;

**2.9 Tool Control**

- Extension cords must be inventoried and have a metal or plastic tag attached, indicating issue number (by location) and length of cord;
- Extension cords longer than 10 feet will be classified and handled as class “R” tools; and
- In high-rise Centers, electrical cords attached to buffers, vacuum cleaners, etc., may not exceed two feet.

Scissors used for in-processing will be tethered securely to the fixture at which they are used.

Issuance of tools from a storage location for a specified project for extended periods requires approval of the security staff. The Work Detail Supervisor will conduct daily onsite checks of extended-use tools issued from the central tool room, and the Center Maintenance Supervisor will conduct such checks monthly at a minimum.

**L. Lost Tools**

The Center Administrator will develop and implement procedures governing lost tools, including verbal and written notification to supervisory officials, addressing residents with prior access to the tool(s) in question, and documentation and review.

When a restricted or non-restricted tool is missing or lost, staff will notify a supervisor immediately and the security staff in writing as soon as possible.

When the missing or lost tool is a class “R” tool, staff will inform the shift supervisor orally immediately upon discovering the loss. Any resident(s) who may have had access to the tool will be held at the work location pending completion of a thorough search.

When a medical unit tool or equipment item is missing or lost, staff immediately will inform the HSA, who will make the immediate verbal notification to the security staff or shift supervisor and written notification to the Center Administrator.

The Shift Supervisor’s office will maintain a lost-tool file, monitor the individual reports for accuracy, ascertain any unusual patterns or occurrences of loss in one or more shops, document search efforts, and send written notification to the security staff.

When a tool is recovered, staff will complete the lost or missing tool report and send copies to the security staff and Shift Supervisor.

The Center Administrator will implement quarterly evaluations of lost/missing tool files, reviewing the thoroughness of investigations, and efforts to recover tools. Documentation of the quarterly evaluations will be maintained on the right side of the tool inventory folder for the shop or area concerned.

**M. Disposition of Excess Tools**

The Center Administrator will establish written procedures to survey and destroy broken or worn out tools.

The tool control staff or security staff will implement procedures for storing broken and/or worn out tools in a secure area, pending survey and disposition.

**2.9 Tool Control**

Excess tools not being surveyed will remain in a designated secure storage area until included in a subsequent survey or returned to use.

To maintain tool inventories at the most efficient operating level, staff in every shop and department will identify and move to a secure storage area all rarely used tools. Bin cards will account for the tools moved from shop to storage areas.

Either the tool control staff or security key control staff will be responsible for destroying all surveyed tools.

Security staff will maintain records of all tool surveys.

**N. Private/Contract Repair and Maintenance Workers**

Before entering or leaving the Center, all visitors, including repair and maintenance workers who are not ICE/Enforcement and Removal Operations or Center employees will submit to an inspection and inventory of all tools, tool boxes, and equipment that could be used as weapons.

Contractors will retain a copy of the tool inventory while inside the Center.

Staff will accompany non-employee workers in the Center to ensure that security and safety precautions and procedures are followed at all times, including removing tools at the end of each shift.

**References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Interim Firearms Policy (7/7/2004)
- Occupational Safety and Health Administration (OSHA)

## 2.10 Use of Physical Control Measures and Restraints

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard authorizes staff to use the minimum necessary and reasonable physical control measures and/or restraints—after all nonphysical efforts to resolve a situation have failed—for protection of all persons; to minimize injury to self, residents, staff, and others; to prevent imminent serious property damage; or to maintain safe and secure Center operations.

Staff will use only the minimum degree of physical control measures and/or restraints necessary to gain control of residents and, under specified conditions, may use physical restraints to gain control of a dangerous resident.

The ICE Family Residential Standards on *Health Care* and *Health Care (Females)* specifically address the use of restraints for medical or mental health purposes.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers always will attempt to gain resident cooperation through nonphysical means prior to any use of physical control measures and/or restraints.
2. Centers will endorse and employ confrontation avoidance techniques as the primary and preferred method for resolving situations, always to be attempted prior to any physical control measures and/or restraints.

## 2.10 Use of Physical Control Measures and Restraints

3. Physical control measures include short personal restraint or temporary separation of a resident from the general population as well as limited use of restraint devices as approved by ICE/ERO and the JFRMU Chief.
4. Physical control measures and/or restraints will only be used when both necessary and reasonable.
5. Physical control measures and/or restraints will be used only to the minimum extent necessary to restore safe and secure Center operations. The use of physical control measures and/or restraints will be restricted to protecting residents and others from imminent harm, justifiable self-defense, or preventing imminent serious property damage. Imminent serious property damage, for the purposes of this standard, involves any instance where such damage significantly interrupts the delivery of services to residents, puts staff or residents at immediate risk of physical harm, or adversely affects the daily operations of the Center. Physical control measures and/or restraints can only be used to immediately interrupt the damaging behavior. In all situations, physical control measures and/or restraints will be used only as a last resort.
6. Physical control measures and/or restraint devices will never be used as punishment.
7. Use of physical control measures and/or restraints will require supervisory approval and will be used only in the specific circumstances described herein.
8. Center staff will write a report and provide it to the Center Administrator or designee no later than the end of the staff member's tour of duty when the staff member used or witnessed the use of physical control measures and/or restraints, on any resident, or if any resident remains in restraints at the end of that shift.
9. The Center Administrator or designee will telephonically notify the Field Office Director (FOD) and Juvenile and Family Residential Management Unit (JFRMU) Chief as soon as practicable following a use of physical control measures and/or restraints. Documentation will be submitted to the FOD and JFRMU Chief, via an ICE-approved form, within two business days of any use of physical control measures and/or restraints involving a resident. Appropriate documentation will be maintained when such measures are used.
10. Canines will not be used in a Residential Center.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Use of Physical Force and Restraints* dated 12/21/2007.

## Expected Practices

### A. Overview

Centers will develop written policy and procedures in compliance with this standard.

Various levels of physical control measures and/or restraints may be necessary and reasonable, depending on the totality of the circumstances. Generally, staff will maintain safe and secure



## **2.10 Use of Physical Control Measures and Restraints**

operations through nonphysical means, using communication and counseling methods to achieve resident cooperation. Physical control measures and/or restraints may be either immediate or calculated; the latter being preferred and most likely to minimize harm to residents or staff.

Use of physical control measures and/or restraints may involve:

- Short personal restraint: A short restraint that lasts no longer than one minute and that is used as an emergency intervention. Such restraints are gentle but firm, and intended to avoid immediate danger to self, staff, or other residents, or imminent serious property damage.
- Temporary separation of a resident from the general population,

Restraint devices may include:

- Handcuffs: stainless steel, 10 oz.;
- Soft restraints: nylon/leather type;
- Plastic cuffs: disposable; and
- Any other restraint device that ICE/ERO approves for use at an FRC.

If additional measures are needed based on the circumstances, the Center Administrator will contact the FOD and JFRMU Chief for guidance.

Follow-up (e.g., medical attention), documentation (e.g., audiovisual recording for calculated uses of physical control measures and/or restraints), reporting, and an after-action review are required for each incident involving use of physical control measures and/or restraints.

Centers will never use physical control measures and/or restraints as punishment. Use of such measures is minimized by staff attempts to first gain resident cooperation. Physical control measures and/or restraints are executed only through approved techniques and involve only the degree of physical control necessary and reasonable to protect residents and others from imminent harm, or in instances of justifiable self-defense.

### **B. Restraining Minors**

If the parent is immediately unavailable or unable to control their child's behavior, and the child's behavior poses an immediate risk of physical harm to self or others, Center staff may use physical control measures and/or restraints to prevent such harm, but must do so with special consideration for the possible effects on the child. Size, age, gender, and comprehension level must be taken into account when considering the use of physical control measures and/or restraints. In any other circumstances, the parent/guardian must provide consent. The use of physical control measures and/or restraints on minors is only authorized as follows:

- Use of restraints on minors ages 12 and under is prohibited. Physical control measures and/or restraints should only be used on minors ages 12 and under to prevent a minor from injuring him/herself or others;
- Use of restraints on minors ages 13–14 requires authorization from the Center Administrator; and

## 2.10 Use of Physical Control Measures and Restraints

- Use of restraints on minors ages 15–17 requires supervisory authorization.

In all cases, Center staff should first use a short personal restraint that lasts no longer than one minute if doing so does not put the minor or staff at risk of physical harm, before moving on to more involved techniques.

All restraints must minimize the risk of physical discomfort, harm or pain to the minor, and use the minimal amount of reasonable and necessary physical force.

Minors will not be medicated without parental consent unless there is imminent danger that the minor will injure himself or others and the parent is unavailable to provide consent.

### C. Principles Governing Physical Control Measures and Application of Restraints

Under no circumstances will staff use physical control measures and/or restraints to punish a resident.

Staff will attempt to gain a resident's willing cooperation before using physical control measures and/or restraints. Measures used to gain a resident's willing cooperation include de-escalation techniques, confrontation avoidance techniques, staff presence without action, and use of verbal commands.

Prior to using physical control measures and/or restraints on adult residents, staff will minimize other family member involvement, to include removing children to a safe location under the supervision of staff whenever feasible.

Staff will use only those physical control measures and/or restraints necessary and reasonable to gain control of a resident, and only after attempts at less restrictive interventions have proven to be ineffective.

Staff may use physical control measures and/or restraints to prevent a resident from harming him- or herself or others, or from causing imminent serious property damage.

Residents subjected to physical control measures and/or restraints will be seen by medical staff as soon as possible. If the physical control measures and/or restraints result in an injury or claim of injury, then additional medical evaluation and appropriate care will be provided.

If a restrained resident refuses to move or cannot move because of the restraints, then staff may lift and carry the resident to the appropriate destination. If feasible, an assistive device (e.g., ambulatory chair, gurney) will be used to help move the restrained resident. Staff may not use the restraints to lift or carry the resident.

Staff may not remove restraints until the resident is no longer a danger to him/herself or others.

The following uses of restraints are prohibited:

- Placing restraints on a resident's neck or face, or in any manner that restricts blood circulation or obstructs the resident's airways (e.g., mouth, nose, neck, esophagus); and
- Using restraints to cause physical pain or extreme discomfort. While some discomfort may be unavoidable even when restraints are applied properly, examples of prohibited applications include improperly applied restraints or unnecessarily tight restraints.

## 2.10 Use of Physical Control Measures and Restraints

Residents will be released from restraints as soon as the restraints have had a calming effect. Staff will monitor restrained residents continuously to determine compliance, to ensure that the restraints are not hampering circulation, and to monitor the general welfare of the resident. The Center health care provider will examine restrained residents at least once every 2 hours. The Shift Supervisor will interview restrained residents at least once every hour.

Staff will notify the Shift Supervisor immediately when a restrained resident becomes compliant. The Shift Supervisor will speak immediately with the resident to confirm his/her compliance.

The decision to release the resident will not be delegated below the level of Shift Supervisor. The Shift Supervisor may seek advice from mental or medical health professionals concerning when to remove the restraints.

The Center Administrator will notify (in advance if feasible) the respective FOD and JFRMU Chief immediately when physical control measures and/or restraint are used.

Documenting, reporting, and investigating the circumstances in which physical control measures and/or restraints are used helps prevent unwarranted use of such measures and protects staff from unfounded allegations of improper or excessive use of physical control. Staff will fully document all instances involving physical control measures and/or restraints. Documentation will include the resident's name, names of staff involved, description and assessment of the situation and specific behavior that was the basis for the use of the physical control measure and/or restraints, the measure(s) administered, length of time, medical observation, and the resident's post-restraint condition.

The Shift Supervisor will orally advise the Center Administrator as soon as feasible when physical control measures and/or restraints are used and provide a written report to the Center Administrator no later than the end of his/her shift during which physical control measures and/or restraints were used on a resident.

## D. Staff Training

### 1. General Training

All staff members who have direct resident contact will be trained in physical control measures as described in the ICE Family Residential Standard on *Staff Training*. The employees also must maintain all relevant certifications. General training requirements include:

- Confrontation-avoidance techniques;
- Use of permitted physical control measures and restraints and specifics for minors;
- De-escalation techniques;
- Emergency behavior interventions;
- Identifying imminent harm;
- Approved methods of self-defense and defensive tactics;
- Prevention of communicable diseases as it relates to using physical control measures and/or restraints;
- Physical control measures and/or restraints in special circumstances (detailed below);

## **2.10 Use of Physical Control Measures and Restraints**

- Application of approved restraints;
- Audiovisual and reporting requirements;
- Professionalism and communication techniques;
- Debriefing and reporting procedures; and
- Prohibited physical control measures and devices.

### **E. Prohibited Physical Control Measures and/or Restraints, Acts and Techniques**

The following acts and techniques are specifically prohibited:

- Using physical control measures and/or restraints as punishment, retribution, or for failure to obey an order;
- Using physical control measures and/or restraints against a resident offering no resistance;
- Choke holds, carotid control holds, and other neck restraints;
- Restraining residents to fixed objects not designed for restraint.

### **F. Use of Physical Control Measures and/or Restraints in Special Circumstances**

Occasionally, after failing to obtain resident cooperation through communication and counseling methods, staff must use physical control measures and/or restraints with residents with special circumstances. Except in instances where immediate use of physical control measures and/or restraints is unavoidable, Centers will consult with the Health Services Administrator (HSA) and comply with the Calculated Use of Physical Control Measures and/or Restraints section in this standard when contemplating use on these residents.

#### **1. Restraining Pregnant Women**

A pregnant resident or resident in post-delivery recuperation will not be restrained absent truly extraordinary circumstances that render restraints absolutely necessary as documented by the Center Administrator and directed by the Clinical Medical Authority (CMA). This general prohibition on restraints applies to all pregnant women in ICE custody, whether during transport, in a Center, or at an outside medical facility. Restraints are never permitted on residents who are in active labor or delivery.

Restraints should not be considered as an option, except under the following extraordinary circumstances:

- Medical staff has directed the use of restraints for medical reasons; or
- Credible, reasonable grounds exist to believe the resident presents an immediate and serious threat of hurting herself, staff, or others.

In the rare event that one of the above situations applies, the CMA will determine the safest method and duration for the use of restraints, and the least restrictive restraints necessary will be used.

Even in the extraordinary circumstance that physical control measures and/or restraints are deemed necessary, writs restraints on pregnant residents should only be applied in front to ensure

## **2.10 Use of Physical Control Measures and Restraints**

the resident is able to break a fall. No resident known to be pregnant will be restrained in a facedown position or in a supine position, or in any restraints that constrict the area of the pregnancy. All attempts will be made to ensure that the resident is placed on the left side if immobilized.

The use of physical control measures and/or restraints requires documented approval and guidance from the CMA. Recordkeeping and reporting requirements regarding the medical approval to use such measures will be consistent with other provisions within these standards, including documentation in the resident's alien file (A-file), resident file, and medical file.

### **2. Restraining Residents with Wounds or Cuts**

Staff will wear protective gear when restraining aggressive residents with open cuts or wounds. If physical control measures and/or restraints are necessary, then protective gear will include a full-body shield. Aggressive residents who are violent or exhibit the potential for violence will be placed in restraints and be removed and kept separate from the general population. Restraints will remain in place as long as the resident poses a physical threat.

### **3. Restraining Residents with Special Medical or Mental Health Needs**

If a situation arises involving a resident with special needs, then the appropriate medical or mental health staff will be consulted in all cases, and prior to restraining or using physical control measures and/or restraints on the resident when feasible. "Residents with special needs" include residents with physical, intellectual, and developmental disabilities and residents with a mental health condition that may impair their ability to understand the situation.

## **G. Restraints**

### **1. Authorized Restraints**

The following equipment is authorized for use by Center staff:

- Handcuffs: stainless steel, 10 oz.;
- Soft restraints: nylon/leather type;
- Plastic cuffs: disposable; and
- Any other restraint device that ICE/ERO approves for use at an FRC.

### **2. Storage**

When not in use, restraints are to be stored securely in an area where access is limited to authorized personnel who are supervisors and above.

### **3. Recordkeeping and Maintenance**

Each Center will maintain a written record of distribution of restraints and will specifically designate and incorporate in one or more post orders. Centers must inventory restraints at least monthly to determine their condition.

## **2.10 Use of Physical Control Measures and Restraints**

### **H. Immediate Use of Physical Control Measures and/or Restraints**

A situation requiring the immediate use of physical control measures and/or restraints is created when a resident's behavior constitutes a serious and immediate threat to self, staff, another resident, imminent serious property damage, or safe and secure Center operations.

Imminent serious property damage is any such damage that interrupts the delivery of services to residents, puts staff or residents at immediate risk for physical harm, or significantly adversely affects the daily operations of the Center. In these circumstances, Center staff may only use physical control measures and/or restraints to interrupt the damaging behavior. In all situations, physical control measures and/or restraints will be used only as a last resort.

Upon gaining control of the resident, qualified health personnel will determine immediately if the resident or Center staff requires medical attention. They also will:

- Examine the resident and treat any injuries immediately, including sending the resident off-site for additional care if necessary, and documenting the services provided in the resident's medical file and on the use of physical control measures and/or restraints report. The medical services provided and diagnosed injuries will be documented; and
- Examine any involved staff member who reports an injury and, if necessary, provide initial emergency care. The examination will be documented.

A written report will be provided to the Shift Supervisor by each staff member involved in the use of physical control measures and/or restraints by the end of the staff member's shift.

The Shift Supervisor will provide a written report to the Center Administrator or designee no later than the end of the shift when physical control measures and/or restraints were used on any resident, or if any resident remains in restraints at the end of that shift.

### **I. Calculated Use of Physical Control Measures and/or Restraints**

Calculated use of physical control measures and/or restraints is feasible and preferred to immediate use of such measures in most cases. It allows staff time to strategize and resolve situations in the least confrontational manner possible. It also gives staff time to assess the situation and plan an appropriate response in situations where the resident does not pose an immediate threat of harm to him/herself or others. Calculated physical control measures and/or restraints are intended to prevent or diminish injury to staff and residents as well as exposure to communicable disease.

A calculated use of physical control measures and/or restraints will be authorized in advance by the Center Administrator, FOD, and JFRMU Chief. The Center Administrator also will consult with the HSA to determine if the resident has medical issues requiring specific precautions.

Medical staff will review the resident's medical file for a disease or condition that a physical control measure and/or restraints could seriously exacerbate.

#### **1. Assessing the Need for Physical Control Measures and/or Restraints**

Before authorizing the calculated use of physical control measures and/or restraints, the FOD, JFRMU Chief, Center Administrator, HSA, and others as appropriate will assess the situation. Taking into account the resident's history and the circumstances of the immediate situation, as well as the



## **2.10 Use of Physical Control Measures and Restraints**

unique environment of an FRC, they will determine the appropriateness of using physical control measures and/or restraints.

The conferring staff will consider in their assessment the resident's medical/mental health history, recent incident reports involving the resident, if any, and emotional shocks or traumas that may be contributing to the resident's state of mind (e.g., a pending removal, divorce, illness, death). The Shift Supervisor will seek the advance guidance of qualified health personnel (based on a review of the resident's medical record) to identify physical or mental health concerns.

The conferring staff also will investigate whether other staff has any information about the resident's current agitation/history or is able to pinpoint the immediate cause. Such investigation also may help identify those who have established rapport with the resident or whose personalities suggest they might be able to reason with the resident, thereby avoiding the need for physical control measures and/or restraints. Upon a decision by the conferring staff that a calculated use of physical control measures and/or restraints is warranted, the Center will adhere to the calculated use requirements described below.

### **2. Calculated Use of Physical Control Requirements and/or Restraints**

- Staff participating in a calculated use of physical control measures and/or restraints will wear protective gear as needed, taking particular precautions when entering an area where blood or other bodily fluids could be present;
- Staff members with a skin disease or skin injury will not participate in any calculated use of physical control measures;
- The Shift Supervisor or another supervisor on duty must be on the scene prior to any calculated use of physical control measures and/or restraints to manage the situation and continuously monitor staff compliance with policy and procedure. They will not participate except to prevent impending staff injury;
- A health services professional will be present to observe and immediately treat any injuries, but will not otherwise participate;
- All staff who were involved in the incident precipitating the need for physical control measures and/or restraints will not participate; and
- The managing supervisor will adhere to audiovisual recording requirements outlined below.

### **3. Documentation and Audiovisual Recording**

Although ICE/ERO requires that all uses of physical control measures and/or restraints be documented and forwarded to ICE/ERO for review, for calculated uses of physical control measures and/or restraints, it is required that the entire incident be audiovisually recorded. The Center Administrator or designee is responsible for ensuring that calculated uses of physical control measures and/or restraints are audiovisually recorded. Staff will be trained in the operation of audiovisual recording equipment. There will be a sufficient number of recording devices located appropriately and maintained in the Center. The audiovisual record and accompanying documentation will be included in the investigation package for the after-action review described below.



## 2.10 Use of Physical Control Measures and Restraints

Calculated uses of physical control measures and/or restraints will be audiovisually recorded in the following order:

- Introduction by the managing supervisor stating the Center name, location, time, date, etc., describing the incident that led to the calculated use of physical control measures and/or restraints, and naming the audiovisual camera operator and other staff present;
- Each participating staff member states their name and title;
- The managing supervisor offers the resident a last chance to cooperate before staff action, outlines the use of physical control measures and/or restraints procedures, and issues the order to use such measures;
- The camera operator records the entire use of the operation, unedited and without breaks in the recording until the resident is calmed;
- The camera operator takes close-ups of the resident's body during a medical exam, focusing on the presence/absence of injuries. The treating medical professional will report any obvious medical findings on screen;
- Staff describes but does not show injuries, if any; and
- The managing supervisor debriefs the incident with a full discussion/analysis/assessment of the incident.

### 4. Use of Physical Control Measures and/or Restraints Reports

All Centers shall develop an ICE/ERO-approved form to document all uses of physical control measures and/or restraints.

Staff shall complete the form for each incident involving use of any physical control measures and/or restraints. The form will identify the resident(s), staff, and others involved, and describe the incident. If restraints are used, then the form will document the approval and the medical and other checks completed if the resident remained in restraints. Each staff member will complete a memorandum for the record to be attached to the original form. The report, accompanied by the corresponding medical report(s), must be submitted to the Center Administrator by the end of the shift during which the incident occurred.

Within two working days of a use of physical control measures and/or restraints, copies of the report will be placed in the resident's resident file and sent to the FOD and JFRMU Chief.

## K. Evidence Protection and Sanitation

The supervisor will inspect areas of blood or other bodily-fluid spill after staff use physical control measures and/or restraints. Unless the supervisor determines that the spill must be preserved as evidence, as specified under the ICE Family Residential Standard on *Contraband*, staff will sanitize those affected areas (e.g., walls, floors, furniture) immediately in accordance with the ICE Family Residential Standard on *Environmental Health and Safety*. Articles of clothing or restraints contaminated with bodily fluids likewise will be disinfected or destroyed as needed and appropriate.

## **2.10 Use of Physical Control Measures and Restraints**

### **L. Maintaining Audiovisual Recording Equipment and Records**

Staff will store and maintain audiovisual recording equipment under the same conditions as “restricted” tools.

The Center Administrator will designate and incorporate in one or more post orders the responsibility for:

- Maintaining cameras and other audiovisual equipment;
- Regularly scheduled and documented testing to ensure all parts, including batteries, are in working order; and
- Keeping back-up supplies on hand (e.g., batteries, tapes or other recording media, lens cleaners).

Each audiovisual record will be catalogued and preserved until no longer needed, but will be kept no fewer than six years. In the event of litigation, the relevant audiovisual record will be retained by the Center for one year after litigation or any investigation has concluded or been resolved.

The audiovisual records may be catalogued electronically so that the data can be searched by date and resident name. A log will document audiovisual record usage.

Audiovisual records of uses of physical control measures and/or restraints will be available for Center, ICE, and U.S. Department of Homeland Security (DHS) incident reviews and also may be used for training.

Release of use of physical control measures audiovisual recordings to the news media may occur only if authorized by the Director of ERO, in accordance with ICE/ERO procedures, rules of accountability, and applicable privacy laws.

### **M. After-Action Review of Use of Physical Control Measures and/or Restraints Written Procedures Required**

All Centers will have ICE/ERO-approved written procedures and report templates for after-action review of uses of physical control measures and/or restraints (immediate or calculated). The primary purpose of an after-action review is to assess the reasonableness of the actions taken and determine whether the physical control measures and/or restraints used were proportional to the resident’s actions.

All Centers will model their incident review process after ICE/ERO’s process and submit it to ICE/ERO and the JFRMU Chief for ERO review and approval. The process must meet or exceed the requirements of ICE/ERO’s process.

#### **1. Composition of an After-Action Review Team**

The Center Administrator, Assistant Center Administrator, the FOD’s designee, the HSA, and the JFRMU onsite coordinator will conduct the after-action review. This after-action review team will convene on the first workday after the incident. The after-action review team will gather relevant information to include medical information regarding resident or staff injury, determine whether policy and procedures were followed, make recommendations for improvement, if any, and

## 2.10 Use of Physical Control Measures and Restraints

complete an after-action report to record the nature of its review and findings. The after-action report is due within two workdays of the use of physical control measures and/or restraints.

### 2. Review of Audiovisual Recording

The after-action review team also will review the audiovisual recording of any uses of physical control measures and/or restraints for compliance with all provisions of this standard, with particular attention paid to:

- Whether the use of physical control measures and/or restraints techniques were exercised properly;
- The professionalism of the Shift Supervisor;
- Adherence to the requirement of wearing prescribed protective gear as needed;
- Ensuring that unauthorized items, equipment, or devices (e.g., towels, tape, surgical masks, hosiery) were not used;
- Whether staff applied only as much physical control as necessary to subdue the resident, including whether staff responded appropriately to a subdued or cooperative resident or a resident who discontinued his/her violent behavior;
- Whether the Shift Supervisor clearly was in charge of the situation. This includes intervention at the first sign of one or more staff applying more physical control measures and/or restraint than necessary;
- Whether the resident received and rejected the opportunity to submit to staff requests voluntarily before staff intervened with physical control measures and/or restraint (if the resident submitted, use of physical control measures and/or restraints should not have been necessary);
- The amount of time needed to control the resident. Any non-resisting resident restrained for longer than necessary could indicate training problems/inadequacies;
- Whether there was continuous audiovisual coverage from the time the camera started recording until the incident concluded. The review team will investigate any breaks or sequences missing from the audiovisual record;
- Whether a medical professional promptly examined the resident, with the findings reported on the audiovisual record;
- Whether staff addressed derogatory, demeaning, taunting, or otherwise inappropriate/inflammatory remarks made to the resident or others; and
- If the incident review reveals a violation of ICE/ERO policy or procedures, the after-action review team then will determine whether the situation called for improvised action and, if so, whether the action taken was reasonable and appropriate under the circumstances.

The after-action review team will complete and submit its after-action review report to the Center Administrator within two workdays of the use of physical control measures and/or restraint. The Center Administrator will review and sign the report, acknowledging its finding that the use of physical control measures and/or restraint was appropriate or inappropriate.

## **2.10 Use of Physical Control Measures and Restraints**

### **3. Report of Findings to FOD and JFRMU Chief**

Within 2 workdays of the after-action review team's submission of its determination, the Center Administrator will report with the details and findings of appropriate or inappropriate use of physical control measures, by memorandum, to the FOD and JFRMU Chief and whether he/she concurs with the finding. Included in the report will be consideration of whether proper reporting procedures were followed and whether appropriate medical care or consultation was sought and provided before, during, and after the use of physical control measures and/or restraint, as appropriate.

### **4. Further Investigation**

ICE/ERO will determine whether the incident requires further investigation and if the incident should be referred to the ICE Office of Professional Responsibility, the DHS Office of the Inspector General, or the Federal Bureau of Investigation.

## **References**

- ICE Family Residential Standard on Contraband
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Environmental Health and Safety
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Health Care (Females)
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Staff Training

## 3.1 Behavior Management

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard promotes a safe and secure living environment for residents by establishing a fair and equitable behavior management system, requiring residents to comply with Center rules and regulations, and imposing corrective action when necessary. Residents will be accountable for their behavior through a system designed to encourage positive behavior and interaction with others. Positive behavior will be recognized and rewarded. Negative behavior will be recognized and corrected.

Various terms used in this standard may be defined in ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Parents/guardians will be responsible for supervising their children and providing parental support in managing their children's behavior.
2. Centers will inform residents of Center rules and regulations, prohibited acts, sanctions that may be imposed, their rights in the Center's behavior management system, and the procedure for appealing any related findings or decisions.
3. Staff will settle minor transgressions informally with and between residents through mutual consent, whenever possible.

### **3.1 Behavior Management**

4. Children under 12 years of age will not be referred to an administrative review or the formal behavior management process. Children 12 years of age and older will be presented for administrative review after all other efforts, including counseling, have been undertaken with the family and have proven ineffective.
5. Center staff who have reason to suspect that a resident has engaged in an infraction or who witness an infraction that cannot or should not be resolved informally will prepare a clear, concise, and complete Incident Report.
6. Each Incident Report will be investigated objectively and impartially by a Center investigator.
7. A serious incident that may constitute a criminal act will be referred to the proper law enforcement or investigative agency as appropriate, and the Center's administrative investigation will be suspended pending the outcome of that referral.
8. An Executive Review Panel (ERP) will investigate and adjudicate the serious incident, and may impose sanctions.
9. Residents will be allowed to appeal decisions through a formal appeals process. An Appeals Review Board (ARB) will review those issues that are not resolved by the ERP or that are appealed by the resident.
10. Residents will be afforded a staff representative, upon request, or automatically if the resident is illiterate, has limited English proficiency (LEP), or otherwise needs special assistance at any time during the behavior management process.
11. Actions of the ARB will be reviewed by the Center Administrator, who may concur with the findings and sanctions or modify them.
12. At all steps in the process, any sanctions imposed will be commensurate with the severity of the infraction committed and are intended to encourage positive behavior in the future.
13. All steps of the process will be performed within the required time limits.
14. At all steps of the process, accurate and complete records will be maintained. The resident will receive copies of all reports, exhibits, and other documents considered or generated in the process, except when disclosure of such documents may pose an imminent threat to the safety or security of the Center staff or other residents, or if the document or other evidence is otherwise protected from disclosure.
15. Records related to the incident and subsequent proceeding will be placed in the resident's residential file.
16. No staff member will harass, discipline, punish, or otherwise retaliate against any resident for filing an appeal, complaint, or grievance.
17. Centers will prohibit harsh, cruel, unusual, unnecessary, demeaning, or humiliating punishment.

### 3.1 Behavior Management

18. Centers' range of incentives and sanctions will consider the range of ages and maturity in the program and will be culturally sensitive.
19. Residents will be afforded rights including, but not limited to, the following: the right to protection from abuse; the right to freedom from discrimination; the right to pursue a grievance; the right to correspond with persons or organizations; and the right to due process.
20. At each step of the behavior management process, the resident will be advised in writing of his/her rights in a language he/she understands, and translation or interpretation services will be provided as needed. When a resident has a diagnosed mental illness or mental disability, or demonstrates symptoms of mental illness or mental disability, a mental health professional, preferably the treating clinician, will be consulted to provide input as to the resident's competence to participate in the behavior management process, any impact the resident's mental illness may have had on his or her responsibility for the problematic behavior, and information about any known mitigating factors in regard to the behavior.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Discipline and Behavior Management* dated 12/21/2007.

## Expected Practices

The unique nature of residential centers mandates an emphasis on cooperation with residential program parameters and general respect between staff and residents. Center behavior management programs (programs) should rely on communication and counseling to achieve and maintain a positive Center peer culture.

Programs will promote positive behavior.

Staff will be trained in effective behavioral modification techniques.

Programs will be implemented consistently.

Residents will receive information on the program during admission.

Behavioral management strategies will include staff-resident interactions that are proactive and not reactive in nature.

Centers will establish incentive-based reward programs that will be submitted to the Juvenile and Family Residential Management Unit (JFRMU) Chief for approval. The programs should consist of:

- Rewards that are age-specific;
- Group rewards for families; and
- Regular meetings with case managers to discuss the family's progress in meeting program objectives.



### **3.1 Behavior Management**

#### **A. Guidelines**

Each Center will have an administrative resident behavior management system (referred to herein as “administrative review”) with progressive levels of investigations, reviews, appeals, procedures, and documentation requirements. Centers will develop written policy and procedures that clearly define resident rights and responsibilities. The policy, procedures, and rules will be reviewed annually at a minimum by the Center Administrator.

The resident handbook or local supplement (as appropriate) issued to each resident upon admission will provide notice of the Center’s rules of conduct and prohibited acts, the sanctions imposed for violations of the rules and related severity scale, the behavior management process, and the procedure for appealing findings or decisions of that process. Residents will have the following rights and will receive notice of them in the handbook:

- The right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage and harassment;
- The right to freedom from discrimination based on race, religion, national origin, gender, sexual orientation, physical or mental ability, or political beliefs;
- The right to pursue a grievance in accordance with procedures provided in the resident handbook, without fear of retaliation;
- The right to pursue a grievance in accordance with the Family Residential Standard on Grievance System and procedures provided in the resident handbook.
- The right to correspond with persons or organizations, consistent with safe and secure Center operations; and
- The right to due process, including the prompt resolution of a disciplinary matter.

Copies of the rules of conduct, rights, and sanctions that may be imposed will be provided to all residents and posted in the living and activity areas in English, Spanish, and other languages spoken by significant segments of the population with limited English proficiency. Rules will be reviewed at least annually, and updated when necessary.

Rules must be easily understandable by residents and their children. Residents with limited English proficiency (LEP) will receive translation or interpretation services, and residents with disabilities will receive appropriate accommodations in order to meaningfully participate in the investigative, disciplinary, and appeal processes.

Centers will ensure rules are formulated with consideration of the range of resident ages and maturity, and are culturally sensitive.

At all steps in the process, any sanctions imposed will be commensurate with the severity of the infraction committed and intended to encourage the resident to conform with rules and regulations in the future.

Behavior management processes may not be capricious or retaliatory, nor based on race, religion, national origin, gender, sexual orientation, disability, or political beliefs.

### **3.1 Behavior Management**

Staff may not impose or allow imposition of the following sanctions: corporal punishment; deprivation of food services, to include use of Nutraloaf or “food loaf”; deprivation of clothing, bedding or items of personal hygiene; deprivation of correspondence privileges; deprivation of legal access and legal materials; or deprivation of indoor or outdoor recreation, unless such activity would create a documented unsafe condition within the Center. Any sanction imposed will be approved by the Center administrator and reviewed by the Field Office Director and JFRMU Chief.

#### **B. Behavior Management Principles and Techniques for Minors**

Staff will discuss behavioral expectations with children and their parents/guardians.

Mechanisms will be developed to reinforce positive behaviors that include parental intervention.,

Clinicians will assist parents/guardians and staff in identifying the causes of a child’s negative behavior and in developing appropriate treatment and staff intervention plans.

Children under 12 years of age will not be referred to an administrative review. If the child remains disruptive and continues to disobey established Center rules after all other efforts, including counseling, have been conducted with the family and have proven ineffective, then the parent/guardian may be referred for administrative review.

Children 12 years of age and older will be presented for administrative review after all other efforts, including counseling, have been conducted with the family and have proven ineffective. If the child remains disruptive and continues to disobey established Center rules after Center staff have attempted to reach an informal resolution, then the child and parent/guardian together will be referred for administrative review that includes progressive levels of investigations, reviews, and appeals.

All sanctions recommended and imposed must be explained to the parent/guardian of the affected minor. When a parent is not immediately available to provide guidance to his/her child (such as when the child is in school, monitored care, or recreational activities, etc.), staff will use positive behavioral management techniques consistently to encourage self-esteem, self-control, and self-direction.

Positive behavioral management methods include, but are not limited to, the following:

- Using praise, positive reinforcement, and encouragement of good behavior instead of focusing only on unacceptable behavior;
- Using clear positive statements to remind children of daily expectations;
- Focusing on the rule to learn and the reason for the rule;
- Focusing on solutions that are respectful, reasonable, and related to the problematic behavior, rather than blaming or focusing on consequences;
- Redirecting a child’s attention or behavior using positive statements;
- Giving children acceptable choices or alternatives;
- Using a kind but firm tone when addressing the child;

### 3.1 Behavior Management

- Using brief supervised separation or time away from the group or situation, when appropriate for a child's understanding, age, and development. Best practices suggest that quiet time or time out from the group should be limited to no more than 1 minute per year of a child's chronological or developmental age. However, this timeframe may need to be adjusted for some children as needed. Time out is not appropriate for infants and is not recommended for toddlers, since they are too young to understand this intervention; and
- Giving logical consequences that are appropriate to the situation and severity of the behavior.

Staff will also advise parents of the need to use positive behavior management techniques for their child(ren) if the child(ren) continue to misbehave. Centers will offer educational programming to parents on a regular basis. Such programming will address, among other things, positive behavior management techniques; staff may encourage particular parents to attend.

### C. Medical or Mental Health Concerns

When a resident has a diagnosed mental illness or mental disability, or demonstrates symptoms of mental illness or mental disability, a mental health professional, preferably the treating clinician, will be consulted to provide input as to the resident's competence to participate in the behavior management process, any impact the resident's mental illness may have had on his or her responsibility for the problematic behavior, and information about any known mitigating factors in regard to the behavior.

Centers will not hold a resident accountable for his/her conduct if the Clinical Medical Authority (CMA) finds him/her mentally incompetent. For purposes of these standards, a mentally incompetent individual is defined as an individual who is unable to appreciate the difference between appropriate and inappropriate behavior, or between "right" and "wrong." Such an individual is not capable of acting in accordance with those norms and, therefore, cannot be held responsible for his/her "wrongful" actions.

A person who cannot assist in his/her own defense because he/she lacks the ability to understand the nature of the behavior management proceedings, as determined by a medical authority, will be considered incompetent. Behavior management proceedings for such a resident will be postponed until such time as the resident is able to understand the nature of the proceedings and to assist in his/her own defense. If the resident's mental status does not improve within a reasonable amount of time, Center staff must find the resident incompetent to assist in his/her own defense and note such finding on the Incident Report. Those deemed mentally incompetent will be reviewed as specified in the ICE Family Residential Standard on *Health Care*.

If a resident has a mental disability or mental illness but is competent, then the behavior management process will consider whether the resident's mental disabilities or mental illness contributed to his/her behavior when determining what type of sanction, if any, should be imposed. A mental health professional should also be consulted as to whether certain types of sanctions (e.g., loss of visitation, loss of phone calls) may be inappropriate because they would interfere with supports that are a part of the resident's treatment or recovery plan.

### **3.1 Behavior Management**

#### **D. Behavioral Interventions for Children**

The parent/guardian of a child who is breaking or has broken Center rules must be included in all discussions regarding behavioral interventions for that child. In all situations in which the child's behavior does not pose an imminent risk of serious physical harm to him-/herself or others, the child's parent/guardian will be provided the opportunity to engage the child to stop the problematic behavior without staff involvement.

When the child's parent/guardian is not immediately available to intervene to stop the child's problematic behavior (such as when the child is in school, monitored care, or recreational activities, etc.), staff must explain to the child the reason for any behavioral intervention, and inform the parent/guardian as soon as possible of any and all intervention(s) undertaken by staff in the parent/guardian's absence.

Prior to imposing a longer-term behavioral intervention (such as a reduction in privileges) on a child as a consequence for a violation of Center rules, staff will meet with the child's parent/guardian to explain the reason for the proposed intervention and to solicit the parent/guardian's input and cooperation. The parent/guardian will thereafter be expected, with the assistance of staff if needed or desired, to explain to the child the reason for the intervention.

Where the child's behavior poses an imminent risk of serious physical harm to him-/herself or others, and when the child's parent/guardian either is not immediately available to intervene to stop the dangerous behavior or is unable or unwilling to intervene, staff will intervene to ensure the safety of the child and others nearby. Staff will also inform the parent/guardian as soon as possible—simultaneously with the intervention wherever possible—of any and all intervention(s) undertaken by staff in the parent/guardian's absence.

Each intervention must be:

- Appropriate to the child's level of understanding, age, and developmental level;
- Appropriate to the incident and severity of the behavior demonstrated; and
- Taken to teach the child acceptable behavior and self-control.

#### **E. Incident Reports**

Minor rule violations will be settled informally and by mutual consent between staff and the affected resident whenever possible.

Centers will develop an Incident Report template that will be approved by the FOD and JFRMU Chief prior to implementation.

If a staff member witnesses a serious infraction or has reason to suspect one has been committed and informal resolution is inappropriate or unattainable, then the staff member will prepare and submit a clear, concise, and complete Incident Report. Centers will notify and provide copies of the Incident Reports to the Field Office Director (FOD) and JFRMU Chief. All incidents will be entered in the Center's Incident Report Log.

If the staff member observes anything unusual in the resident's behavior or demeanor, then he/she will note the same in the report. The reporting staff member also will list all staff, contractors,

### 3.1 Behavior Management

volunteers, and/or resident witnesses to the incident, and the disposition of any physical evidence relating to the incident. The reporting staff member will sign the report and include title, date, and time the report was signed. The report will be submitted to the Shift Supervisor before the end of the staff member's shift. The Shift Supervisor will review all Incident Reports before going off duty.

#### F. Investigations

Centers will have procedures in place to ensure that all Incident Reports are investigated within 24 hours of the incident.

The investigating staff member must be a supervisor or a full-time, trained, designated investigator and will have had no prior involvement in the incident, as either witness or staff member at the scene.

Children may not be questioned outside the presence of their parents/guardians unless the incident occurred between the parent/guardian and child and the incident involved abuse or neglect.

Allegations involving a criminal offense will be reported to the FOD and JFRMU Chief and immediately referred to the appropriate law enforcement agency with criminal investigative authority. In these cases, no interviews will be conducted by Center staff.

The investigating staff member will:

- Commence the investigation within 24 hours of receipt of the Incident Report;
- Preserve, inventory, control, and store any contraband that may be evidence in connection with the violation of a criminal statute so as to maintain and document the chain of custody. Contraband will be reported to the appropriate law enforcement authority for action and possible seizure and prosecution as appropriate. See the Preserving Evidence section in the ICE Family Residential Standard on *Searches and Inspections*;
- Advise the resident of his/her rights, including the right to remain silent at every stage of the process and that silence may not be used to support a finding against him/her, as well as the resident's due process rights before the ERP and ARB, as provided in this standard;
- Complete the investigation within 72 hours of receipt of the Incident Report, barring exceptional circumstances;
- Provide the resident a copy of the Incident Report and Notice of Charges immediately upon the completion of the investigation, and at least 24 hours before the start of any proceedings;
- Terminate the administrative investigation if the incident is under investigation on different grounds (e.g., incident is under criminal investigation) unless and until the agency with primary jurisdiction concludes its investigation or indicates it will not pursue the matter, or unless directed otherwise by ICE;
- Record personal observances and other potentially material information;
- Prepare a factual report of the investigation, including the location or disposition of any physical evidence including contraband;

### **3.1 Behavior Management**

- Prepare a Notice of Charges document; and
- Forward all reports relevant to the incident and investigation to the ERP, but do not provide a copy to the resident at this stage of the process, except for a copy of the Incident Report as instructed above.

#### **G. Executive Review Panel (ERP)**

All Centers will establish an ERP to investigate and adjudicate infractions that are not informally resolved. It also will ensure that the resident is afforded all rights listed below.

Children under 12 years old will not be referred to the administrative review process. Children 12 years of age and older will be presented for administrative review—including to the ERP—only after all other efforts, including counseling, have been undertaken with the family and have proven ineffective.

The ERP will comprise at least four members: an ICE staff member, a Center management-level staff member, the JFRMU Onsite Coordinator, and a Center direct care staff member who is familiar with the resident involved. The ERP will not include the reporting staff member, the investigating staff member, or a staff member who witnessed or was involved directly in the incident, except in the unlikely event that every available staff member witnessed or was involved directly in the incident. In such cases, the selection will be documented in the ERP record.

The ERP will conduct hearings and, to the best extent possible, will resolve allegations of infractions in accordance with the list of offenses in Appendix 3.1.A: Offense Categories. Unresolved cases and appealed issues are forwarded to the ARB.

The ERP is authorized to:

- Conduct hearings and resolve incidents;
- Call witnesses to testify;
- Consider written reports, statements, physical evidence, and oral testimony;
- Hear pleadings by a resident and/or his/her staff representative;
- Make findings that a resident did or did not commit the infraction as charged, based on the preponderance of the evidence; and
- Impose sanctions as listed and authorized in the Acceptable Corrective Sanctions for Minors and Acceptable Corrective Sanctions for Adults sections in this standard.

The ERP will:

- Verify that the affected resident has been advised of and afforded his/her due process rights, as provided below in this standard, as well as been advised of the administrative review procedures;
- Remind the resident of his/her right to a staff representative, provide one if requested, and verify that a staff representative has been assigned when a representative is requested;



### **3.1 Behavior Management**

- Advise the affected resident of his/her right to waive the hearing and admit having committed the offense;
- Conduct the hearing on the first business day after receiving the documentation from the investigator, unless the resident requests more time to gather evidence or otherwise prepare for the hearing. In cases where a hearing is delayed, the reason(s) must be documented (e.g., a continuing investigation of facts, unavailability of one or more essential witnesses, etc.) and, unless the resident has requested the delay, approved by the Center Administrator;
- Consider the reliability of information provided by a confidential source before considering it in the hearing; disclose as much of this information as possible without jeopardizing the safety and security of residents and Center staff; and include in the hearing record the factual basis for finding the information reliable;
- Prepare a written record of its proceedings within 2 business days of the conclusion of the hearing. This record must show that the resident was advised of his/her rights. It also must document the evidence considered and subsequent findings, decisions, and recommended sanctions, along with a brief explanation, as well as whether an interpreter was used;
- Forward the entire record to the Center Administrator, who may concur, terminate the proceedings, or impose a lesser sanction;
- Refer to the ARB any incident requiring higher-level review or appeal; and
- Serve the resident with:
  - A copy of the ERP's decision, which must contain the reason for the disposition and sanctions imposed;
  - A copy of the Center Administrator's decision; and
  - Where relevant, written notification that the case will be referred to the ARB.

The resident in ERP proceedings has the right to due process, which includes the rights to:

- An ERP hearing on the first business day after receiving the Incident Report, unless the resident requests more time to gather evidence or otherwise prepare for the hearing;
- Remain silent at any stage of the process;
  - Attend the hearing (excluding panel deliberations) or waive the right to appear. If security considerations prevent the resident's attendance, the panel must document the security considerations and, to the extent possible, facilitate the resident's participation in the process by telephonic testimony, the submission of documents, written statements, or written questions to be asked of witnesses;
- Have staff representation to assist in preparing his/her defense and advise during the process;



### **3.1 Behavior Management**

- Have an interpreter present if the hearing is conducted in a language other than the resident's preferred language;
- Receive auxiliary aids or services to ensure effective communication if the resident has limited hearing or sight or another disability;
- Present statements and evidence, including witness testimony, on his/her own behalf;
- Appeal the panel's determination to the ARB and/or through the resident grievance process; and
- Receive all notifications and decisions in writing and either orally or in writing in the resident's preferred language.

#### **H. Appeals Review Board (ARB)**

All Centers will have an ARB to adjudicate unresolved ERP issues and hear appeals. The board will comprise at least two members: an ICE management-level staff member, and a Center management-level staff member.

Children under 12 years old will not be referred to the administrative review process. Children 12 years of age and older will be presented for administrative review—including to the ARB—only after all other efforts, including counseling, have been undertaken with the family and have proven ineffective.

The board may not include the reporting staff member, the investigating staff member, any member of the referring panel, or anyone who witnessed or was directly involved in the incident. Exceptions may occur only if the number of staff members required for the board cannot be filled due their direct involvement in the incident. In such cases, all reasons must be documented.

The ARB will conduct hearings on cases referred by the ERP or raised in resident appeals. The ARB can make findings, or overturn previous findings, that the resident did or did not commit the infraction(s) as charged, based on the preponderance of the evidence.

The ARB is authorized to perform the same activities as the ERP. In addition, the ARB will:

- Verify that the resident was advised of and afforded his/her rights per this standard;
- Remind the resident of his/her right to a staff representative, provide one if requested, and verify that a staff representative has been assigned when a representative is requested;
- Conduct the hearing on the first business day (but at least 24 hours after the resident has received notice) after receiving the ERP referral;
- Prepare a written record of the proceeding. This record must show that the resident was advised of his/her rights. It also must document the evidence considered by the panel, any changes to the ERP decision and evidence supporting the changes, and sanctions imposed, as well as a brief explanation and whether an interpreter was used;
- Forward the entire record to the Center Administrator, who may (a) concur, (b) terminate the proceedings, or (c) impose more severe or more lenient sanctions; and

### **3.1 Behavior Management**

- Serve the resident with written notification of the decision on the appeal, which must contain the reason for the decision, in the resident's preferred language.

In addition to the rights afforded during the ERP process, the resident in ARB proceedings has the right to a hearing on the first business day after referral from the ERP (if so desired), and to waive the 24-hour notification provision and request an immediate hearing.

If security or safety considerations prevent the resident's attendance at any ARB hearing, then the ARB must document the security considerations and, to the extent possible, facilitate the resident's participation in the process by telephonic testimony. Regardless of their attendance, residents will be able to submit and receive documents, written statements, and questions to be asked of witnesses.

#### **I. ERP and ARB Hearing Forms**

Both ERP and ARB proceedings will be documented on a form that will include:

- The affected resident's acknowledgment of rights;
- Names, titles, and signatures of the panel and/or board members;
- The date and time of the hearing;
- The finding(s) and sanction recommendation(s);
- The Center Administrator's approval or modification of the decision and sanction;
- The date, time, and signature of the staff serving the resident with the decision and sanction; and
- The affected resident's signature acknowledging the sanction.

#### **J. Staff Representation for Residents during an ERP**

Upon the resident's request, the Center Administrator will assign a staff representative to help prepare a defense prior to the commencement of the ERP. This assistance will be provided automatically for residents who are illiterate, have LEP, or who are without means of collecting and presenting essential evidence. Residents also will have the option of receiving assistance from another resident of their selection rather than a staff representative, subject to approval from the Center Administrator.

1. A staff representative must be a full-time Center employee.
2. Because of the potential conflict of interest, the Center Administrator, staff members initially involved in the case, eyewitnesses, the reporting and investigating officers, and anyone else with a stake in the outcome will not act as staff representative.
3. The resident may select his/her staff representative, barring those identified in paragraph 2 above.
4. The ERP will arrange for the presence of the staff representative selected by the resident. If that staff member declines or is unavailable, the resident may:

### **3.1 Behavior Management**

- a. select a different representative;
  - b. wait for the unavailable staff member to become available (within a reasonable period); or
  - c. proceed without a staff representative.
5. A staff member who declines to serve must state the reason on the staff representative form.
  6. If several staff decline, the Center administrator will assign one.
  7. The staff representative will be free to speak to witnesses and to present evidence on the resident's behalf, including evidence of any mitigating circumstances. The staff representative must act in good faith on behalf of the resident, and interview witnesses and obtain documentary evidence as requested by the resident or as otherwise reasonably seen as relevant to the defense of the charges or in mitigation of the charges.
  8. The ERP will allow the staff representative enough time to speak with the resident and interview witnesses prior to commencement of the proceeding. The ERP may grant a request for extension of time if required for an adequate defense.
  9. In the event that a resident cannot effectively present his/her own case, the Center Administrator will appoint a staff representative, even if not requested by the resident.

#### **K. Confidential Information**

The ERP and ARB will establish the reliability of information provided by a confidential source before considering it in the proceedings. The ERP and ARB may withhold the confidential source's identity from the resident or staff representative. While the staff representative may challenge the substance of any confidential information the ERP discloses, he/she may not question its reliability (which is pre-established by the ERP). When a decision relies on information from a confidential source, the ERP or ARB will disclose as much confidential information as may be disclosed without jeopardizing the safety and security of Center staff, residents, and other persons, and will include in the hearing record the factual basis for finding the information reliable.

#### **L. Postponement of Proceedings**

All Centers will permit hearing postponements or continuances under certain circumstances.

Circumstances justifying the postponement or continuance of a hearing might include, but are not limited to: defense preparation, physical or mental illness, security, transfer, or pending criminal prosecution.

An uncooperative resident also may cause a delay in the proceedings, either because of inappropriate behavior during the hearing process or a refusal to participate in a productive manner.

#### **M. Sanctions for Residents**

Sanctions will be designed to correct poor behavior and to encourage appropriate behavior. Their use will be limited to those instances where other intervention has been tried and been proven

### **3.1 Behavior Management**

unsuccessful. All sanctions will be commensurate with the severity of the infraction and intended to encourage the resident to conform to rules and regulations in the future.

The duration of sanctions will be within established limits and will not be imposed arbitrarily.

Corrective sanctions may not be capricious, retaliatory, or based on race, religion, national origin, gender, sexual orientation, disability, or political beliefs.

Staff may not impose or allow imposition of any service deprivation.

The Center will not take administrative or disciplinary action against a resident for sexual contact with staff members unless there is a finding that the staff member did not consent to such contact.

A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

#### **1. Prohibited Sanctions**

- Corporal punishment or the threat of corporal punishment. Corporal punishment is defined as the infliction of harm or punishment on any part of a resident's body as a means of controlling or managing the resident's behavior;
- Performing any form of physical exercise;
- Doing any form of "unproductive work." "Unproductive work" is defined as work that serves no purpose except to demean a resident. "Unproductive work" does not include work that corrects damage caused by a resident's behavior;
- Performing any harsh, cruel, unusual, unnecessary, demeaning, or humiliating physical discipline or other punishment;
- Placing residents in a dark room, closet, or confined/locked space. A locked space includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut;
- Requiring residents to remain silent or inactive for inappropriately long periods of time;
- Deviating from normal food services;
- Depriving residents of clothing, bedding, or personal hygiene items;
- Depriving residents of access to any service provided such as correspondence, telephone, visitation, exercise, recreation, education, medical, legal access, or attorney visits;
- Separating parents/guardians from their children;
- Imposing psychological intimidation, including prohibiting sleep or humiliating, shaming, ridiculing, rejecting, or yelling at a resident; and
- Restricting resident movement or removing them from the general population pending disposition unless needed for the protection of self, other residents, or staff.

### 3.1 Behavior Management

## 2. Acceptable Corrective Sanctions for Minors

Either the ERP or ARB may impose the sanctions listed below for children 12 years old and older:

- Referral to counseling;
- Loss of extracurricular activities, such as movie night;
- Loss of field trip privileges for up to 30 days; and
- Suspension of free movement privileges. Children 12 years of age and older may have their free movement privileges suspended for up to 14 days. Such a suspension will require that the child's parent/guardian supervises all activities for that time period.

Minors will not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Sanctions may not adversely impact a minor's health, physical, or psychological well-being, or deny a minor regular meals, snacks, sufficient sleep, exercise, medical and mental health care, the right to correspondence, or legal assistance. Sanctions will not restrict a minor's access to medical or mental health appointments or education. Staff will not separate or threaten to separate parents/guardians from children as a form of punishment (see the Prohibited Sanctions section in this standard).

Only the ERP may restrict minors to the living and activity area, and only for durations not to exceed 24 hours:

- When a minor's movement is restricted, they must be afforded a minimum of 1 hour of outdoor activity time daily; and
- The minor may be restricted to the living and activity area but will not be forced to remain in his/her room.

## 3. Acceptable Corrective Sanctions for Adults

Either the ERP or ARB may impose the sanctions listed below:

- Referral to counseling;
- Required attendance in appropriate classes (parenting, anger management, etc.);
- Additional work details, such as general housekeeping;
- Loss of field trip privileges for up to 30 days;
- Restriction to the living and activity area, for a duration not to exceed 72 hours:
  - When a resident's movement is restricted, they must be afforded a minimum of 1 hour of outdoor activity time daily;
  - A resident may be restricted to the living and activity area but will not be forced to remain in his/her room; and
  - Prior to imposing this sanction, the ERP must take into account the ages of the affected resident's children and the negative impact this sanction would have on the children who were not involved in the charged offense.

### **3.1 Behavior Management**

When the ERP believes a resident presents an immediate or continuing threat to Center safety or welfare, it may recommend to the respective FOD and JFRMU Chief that the resident be removed from the Center.

## **N. Documents**

All documents relevant to the incident, subsequent investigation, and hearing(s) will be completed and distributed in accordance with Center procedures.

The report and accompanying documents will be maintained in the resident's file. The Center may also retain the material in its own files for Center statistical or historical purposes.

### **1. Incident Report/Notice of Charges**

The staff member will prepare an Incident Report and submit it to the supervisor immediately after the incident takes place. If the incident is resolved informally, then the staff member will note so on the original report, which then will be forwarded to the Center Administrator.

If the ERP is to be involved, then staff will serve the resident with a copy of the Notice of Charges upon completion of the investigation, no fewer than 24 hours before the ERP hearing.

The ERP receives the original copy.

If the ERP hears the matter, then the ranking member of that panel will serve the resident with a copy of the Incident Report/Notice of Charges indicating their decision. The ERP, upon conclusion of its proceedings, will forward the entire record to either the Center Administrator or the ARB, as appropriate.

### **2. Investigation Report**

The original will be submitted to the ERP. The resident does not receive a copy.

### **3. ERP Report of Findings and Action**

The original will be served on the resident after the ERP issues its findings. A copy will be included in the resident file.

### **4. Notice of ARB Hearing**

The original will be served on the resident after the ARB issues its findings. A copy will be included in the resident file.

### **5. Resident Rights at ARB Hearings**

The original will be served on the resident after the ARB issues its findings. A copy will be included in the resident file.

### **6. ARB Report**

The original will be included in the resident file. A copy will be provided to the resident.

## **References**

- ICE Family Residential Standard on Definitions

### **3.1 Behavior Management**

- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Searches and Inspections



**3.1 Behavior Management**

## Appendix 3.1.A: Offense Categories

### I. Federal, State, or Local Criminal Offenses

Any resident who commits a Federal, State, or local criminal offense to include child abuse and neglect, will be referred to the appropriate law enforcement agency.

### II. Conduct that Disrupts or Interferes with Safe and Secure Center Operations

- Physically punishing children;
- Willful failure of parent/legal guardian to appropriately manage child(ren)'s behavior after receiving counselling and guidance to remedy identified issues;
- Jeopardizing the health, safety, or welfare of residents or staff;
- Interfering with a staff member in the performance of duties;
- Possession of soft contraband;
- Refusing to comply with rules, regulations, or Center instructions;
- Being in an unauthorized area;
- Failing to participate in or interfering with census and emergency counts;
- Verbal harassment of a resident, which means acting in such a manner as to create a hostile residential environment for other residents regardless of age or gender;
- Using abusive or obscene language;
- Wagering any item of value or service; and
- Being unsanitary or untidy; failing to keep self, children, and living area in accordance with posted instructions.

## 4.1 Food Service

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents are provided a nutritionally balanced diet that is prepared and presented in a sanitary and hygienic food service operation.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. All residents will be provided nutritionally balanced diets that are reviewed at least quarterly by the Food Service Administrator (FSA) and reviewed and certified at least annually by a certified nutritionist or dietitian qualified to examine menus for both children and adults.
2. Residents, staff, and others will be protected from harm, and Center security and safety will be maintained, by the application of sound security practices in all aspects of food service and dining room operations.
3. Residents, staff, and others will be protected from injury and illness by adequate food service training and the application of sound safety and sanitation practices in all aspects of food service and dining room operations.
4. Dining room facilities and operating procedures will provide sufficient space and time for residents to eat meals in a relatively relaxed, unregimented atmosphere.

**4.1 Food Service**

5. Food service facilities and equipment will meet applicable federal, State and/or local governmental health and safety codes, and licensing requirements.
6. Residents, staff, and others will be protected from health hazards by advance medical screening and clearance before any resident is assigned to work in food service operations.
7. Food service areas will be inspected by food service staff and other assigned personnel on schedules determined by the FSA and Center Administrator, and in accordance with applicable policy requirements.
8. Staff will intermittently monitor uneaten/disposed of food and survey the residents to evaluate acceptance of the menu being served to all age groups.
9. Stored food goods will be maintained in accordance with required conditions and temperatures.
10. Food service personnel will provide nutritious and appetizing meals. Nutritional needs are diverse because of differences in age, activity, physical condition, gender, religious preference, and medical considerations. Food service personnel will accommodate the ethnic and religious diversity of the Center's resident population when developing menu cycles to the extent that is reasonably possible. Although each Center must meet all ICE/Enforcement and Removal Operations (ERO) Standards and follow required procedures, individuality in menu planning is encouraged.
11. Centers will develop dining hall rules of behavior and conduct that will be posted and enforced.
12. Therapeutic medical diets and supplemental food will be provided as prescribed by the Center's medical staff.
13. Special diets and ceremonial meals will be provided for residents whose religious beliefs require adherence to religious dietary laws.
14. Residents will receive a religious or special diet free of any personal cost.
15. Food never will be used for reward or punishment.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Food Service* dated 12/21/2007.

## Expected Practices

### A. Administration

#### 1. Food Services Administrator (FSA) or Equivalent

Centers will develop policies and procedures to ensure a safe environment for residents within the food service area. Center training staff will devise and provide appropriate training to all food service personnel.

**4.1 Food Service**

The food service program will be under the direct supervision of an experienced FSA who is responsible for the following:

- Planning, controlling, directing, and evaluating food service;
- Training and developing Cook Foremen (CF);
- Managing budget resources;
- Establishing standards of sanitation, safety, and security;
- Developing nutritionally adequate menus and evaluating residents' acceptance of them;
- Developing specifications for procurement of food, equipment, and supplies; and
- Establishing a training program that ensures operational efficiency and a high-quality food service program.

The food service department also will be staffed by one or more Cook Supervisors (CS) and CF, although the organizational structure may differ among Centers, particularly when food service is provided by a food service contractor. Therefore, references to the CS and CF in this standard describe typical duties for those positions, although the functions may be performed by others, depending on the organizational structure.

**B. Security****1. Custody and Security**

The Center's policies and procedures will address the following:

- Buildings or portions of buildings housing the food service department;
- All types of resident traffic in and out of the department;
- Resident behavior;
- Control of repairs;
- Control of utensils with a custodial hazard potential (e.g., knives, cleavers, saws, tableware);
- Official census;
- Area searches; and
- Any other matters having a direct or indirect bearing on custody and security.

The Center's training staff member will devise training curricula and provide appropriate training to all food service personnel in resident custodial and security issues. Among other topics, this training will cover ICE/ERO's current standards.

**2. Knife Control**

Centers will establish a system to control the use and storage of knives. Knives will be stored in a shadow-boarded, locked cabinet. The knife cabinet must be equipped with an approved locking device. The on-duty CF, under direct supervision of the CS, will maintain control of the key that locks the cabinet.

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Knives must be secured physically to workstations for appropriate secure usage. Residents must be under direct staff supervision at all times when using knives. Knives will be inventoried and stored in accordance with the ICE Family Residential Standard on *Tool Control*.

To be authorized for use in the food service department, a knife must have a steel tang through which a metal cable can be mounted. The Center's tool control staff member is responsible for mounting the cable to the knife through the steel tang.

The FSA/CS will monitor the condition of knives and other food service utensils, disposing of items not in good working order and ordering replacements. If a knife is misplaced or lost, then staff will notify the FSA and security staff immediately, and will hold residents who may have had access to the missing knife in the area until a thorough search is conducted. The responsible CS will provide the details of the loss in a written report to the administrator.

The knife cabinet will meet the tool-control standards of the federal Occupational Safety and Health Administration (OSHA), as well as any applicable state or local standards and site-specific standards developed by the Center.

**3. Key Control**

Keys will be inventoried and stored in accordance with the ICE Family Residential Standard on *Key and Lock Control*.

The control room staff member will issue keys only in exchange for a name chit from receiving staff. Under no circumstances will residents have access to Center keys.

The CS will return the keys to the control room before going off duty. At no time may anyone carry Center keys outside the Center.

**4. Controlled Food Items/Hot Items**

All Centers will have procedures for handling food items that pose a security threat.

**Yeast and Yeast Products.** All yeast must be stored in an area with no resident access, preferably in a locked metal yeast cabinet for which the food service department has only one key and a duplicate key is maintained by the designated key control staff. The locked yeast cabinet will be maintained in a secure area.

Until the yeast is thoroughly incorporated as an ingredient in a food item being prepared, only one member of the food service staff, closely supervised, may handle and dispense it.

Staff will keep a record of the yeast inventory (in pounds and ounces), indicating quantity of receipt and issue, balance on hand, and the record-keeper's initials.

**Other Food Items.** Mace, nutmeg, cloves, sugar, and alcohol-based flavorings also require special handling and storage.

The purchase order for any of these items will specify the special-handling requirements for delivery.

Staff will store and inventory these items in a secure area in the food service department.

Staff will supervise use of these items directly.

**4.1 Food Service****C. Resident Workers****1. Resident Workforce**

Residents may volunteer for work in accordance with the ICE Family Residential Standard on *Voluntary Work Program*. The number of residents assigned to the food service department will be based on a quota developed by the FSA and approved by the Center Administrator. The quota will provide staffing according to actual needs, and will eliminate any bias toward over- or understaffing.

Centers will designate a space for storing resident workers' belongings while the workers are in the food service area. This area will be separated from where food is prepared, stored, and served, and where utensils are washed and stored.

**2. Resident Job Descriptions**

The FSA will review resident job descriptions annually to ensure accuracy and specific requirements. Before starting work in the department, the resident will sign for receipt of the applicable job description. A copy of the resident's job description will remain on file for as long as the resident remains assigned to the food service department.

**3. Resident Orientation and Training**

To ensure a quality food service program and instill good work habits, each CS will instruct newly assigned resident workers in the rules and procedures of the food service department. During the orientation and training session(s), the CS will explain and demonstrate safe work practices and methods, and will identify the safety features of individual products and equipment.

Training also will include workplace-hazard recognition and deterrence, including the safe handling of hazardous materials. Residents will learn to use and understand protective devices and clothing and to report any malfunctions or other safety-related problems to their supervisors.

The CS must document all training in each resident's file.

**4. Resident Work Hours and Pay**

Resident volunteers will work and be paid in accordance with the ICE Family Residential Standard on *Voluntary Work Program*.

**5. Meals for Food Service Workers**

The FSA will establish the meal schedules for resident food service workers.

Resident workers will receive the same fare as other residents. The CS will not allow residents to prepare "special" dishes or condiments for their own or other residents' consumption.

Resident workers assigned to the staff dining room may be allowed to eat in that area. All others will eat in the main dining room, or, if the Center has no main dining room, the FSA will designate an area for workers to eat.

**4.1 Food Service****D. Food Service Dining Room/Satellite Meals Operations****1. General Policy**

Ordinarily, residents will be served three meals every day, at least two of which will be hot meals; however, the Center Administrator may approve variations in the food service schedule during religious and civic holidays, provided that basic nutritional goals are met. The dining room schedule must allow no more than 14 hours between the evening meal and breakfast. Meals always will be prepared, delivered, and served under staff (or contractor) supervision.

Clean, potable drinking water must be available at all times.

Minimum meal times will be at least 30 minutes and will be limited only as necessary to ensure the safe and orderly operations of the Center. Meals will be served in as unregimented a manner as possible, consistent with appropriate and posted rules. The FSA's table arrangement should facilitate ease of movement and ready supervision.

**2. Display and Service**

The following procedures apply to the display, service, and transportation of food to main and satellite food service areas.

Before and during the meal, the CS in charge will inspect the food service line to ensure:

- All menu items are ready for consumption;
- Food is presented appropriately; and
- Sanitary guidelines are observed, with hot foods maintained at a temperature of at least 140 degrees Fahrenheit (F) (120 degrees F in food trays) and foods that require refrigeration maintained at 41 degrees F or below.

Every open food item and beverage will be protected from contaminants by easily cleaned sneeze-guards, cabinets, display cases, or other such equipment.

Servers must wear food-grade plastic gloves and hair nets whenever there is direct contact with a food or beverage. Servers must use tongs, forks, spoons, ladles, or other such utensils to serve any food or beverage. Serving food without use of utensils is strictly prohibited.

Servers will use scoops, tongs, or other approved utensils when handling or dispensing ice for consumption. The FSA will consider the practicability of purchasing automatic ice-dispensing equipment.

Utensils will be sanitized:

- As often as necessary to prevent cross-contamination and other food-handling hazards during food preparation and service;
- After every food preparation/service session; and
- Again, if necessary, immediately before being used.

Sugar, condiments, seasonings, and dressings available for self-service will be provided in individual packages, closed dispensers, or automated condiment-dispensing systems. Salad



**4.1 Food Service**

dressings may be served in open containers if the serving ladle extends beyond the top edge of the container.

If the Center does not have sufficient equipment to maintain the minimum or maximum temperature required for food safety, then the affected items (e.g., salad bar staples such as lettuce, meat, eggs, cheese) must be removed and discarded after two hours at room temperature.

Food will be delivered from one place to another in covered containers. These may be individual containers, such as pots with lids, or larger conveyances that can move objects in bulk, such as enclosed, satellite-meal carts.

In any Center, if food carts are delivered to housing units by residents, then they must be locked unless they are under constant supervision of staff.

All food-safety procedures (e.g., sanitation, safe-handling, storage) apply without exception to food in transit.

Soiled equipment and utensils must be transported to the appropriate receptacles in closed containers.

A member of the food service staff will oversee the loading of satellite-meal carts. Staff will inspect all food carts before allowing their removal from the food service area.

**3. Dining Room Workers**

Centers will assign a supervisor to be responsible for ensuring the dining room is maintained in a sanitary and safe condition.

The CF in charge will train dining room workers in the requirements of the job, including how to perform specific tasks. A basic task common to all dining room workers is to keep the tables and floors clean during the meal service. Once the meal service is finished and the residents have left the room, the workers can undertake major cleaning tasks.

**4. Posted Rules and Enforcement**

Posted rules will be clear and concise and will address:

- Whether food can be removed from the dining area; and
- That parents/guardians will supervise their children at all times.

**5. Serving Lines**

The serving counter will be designed and constructed to separate and insulate hot foods from cold foods. A transparent “sneeze guard” is required. Serving lines will be constructed in a manner that allows residents to view and choose from various selections.

**6. Salad Bars and Hot Bars**

Food items at salad bars and hot bars will be arranged for logical and efficient service. A transparent “sneeze guard” is required.

### 7. Beverage Counter/Bar

Self-service beverage-and-ice stations will be designed for quick and easy access. These stations will be designed for sanitary and efficient service, including traffic flow.

### 8. Staff Dining Room

The FSA will have authority over the staff dining room. The staff dining room will offer the same food items as the resident dining room.

### 9. Meal Tickets

The Center may establish a meal ticket program for staff and guests. ICE/ERO staff and contractors are prohibited from receiving free Center meals.

Examples of persons who may receive Center meals free of charge include advisors, guest speakers, technicians/others rendering a service without charge, equipment demonstrators, athletic teams, entertainers, foreign visitors, volunteers, and others whose service to the Center is in the best interest of the government.

Individuals receiving government reimbursement for their services (e.g., contract employees, *per diem*-status personnel) are ineligible for guest meals provided free of charge.

## E. Menu Planning

### 1. General Policy

The FSA will base menu selections on the best nutritional program the Center can afford while meeting U.S. minimum daily allowances for all age groups housed at the Center. The ICE/ERO standard menu cycle is 35 days.

The food service program significantly influences morale and attitudes of residents and staff, and creates a climate for good public relations between the Center and the community.

The overall goal of a quality food service program is to provide nutritious and appetizing meals efficiently and within constraints of the existing budget, personnel resources, equipment, and physical layout of the Center. Nutritional needs are diverse because of differences in age, activity, physical condition, gender, religious preference, and medical considerations.

The FSA will accommodate the ethnic and religious diversity of the Center's resident population when developing menu cycles. While each Center must meet all ICE/ERO Standards and follow required procedures, individuality in menu planning is encouraged. Centers geographically near one another will consider the benefits of coordinating their menus and the cost reductions to be achieved through joint purchasing.

The FSA is solely responsible for food service program planning and resource allocation and use. Staff will conduct quarterly resident food surveys, to include preferences, quality, quantity, and comment cards. Staff will also look for trends in uneaten/disposed of food and report to the FSA as needed. Based on these results, the FSA will modify menus when possible.

**4.1 Food Service****2. Nutritional Analysis**

A registered dietitian with experience in both adult and pediatric nutrition will conduct a complete nutritional analysis that meets U.S. Recommended Daily Allowances (RDA), at least yearly, of every master-cycle menu planned by the FSA. The dietitian must certify menus before they are incorporated into the food service program. If necessary, the FSA will modify the menu in response to the nutritional analysis to ensure nutritional adequacy. In such cases, the menu will be revised and re-certified by the registered dietitian.

If the master-cycle menus change more than five percent during the year, then the cycle will be reevaluated to ensure nutritional values are maintained.

**F. Food Preparation****1. General Policy**

The CS or equivalent is responsible for ensuring that all items on the master-cycle menu are prepared and presented according to approved recipes. This responsibility includes assessing the availability and condition of ingredients required by particular recipes, and communicating supply needs to the FSA. For this reason, the CS will review upcoming menu items as far in advance as possible.

The CS or equivalent has the authority to change menu items when necessary. Every such change or substitution must be documented and forwarded to the FSA. The CS will exercise this menu-changing authority as infrequently as possible.

**2. Preparation Guidelines**

Food will be prepared with minimal manual contact. Food service workers will wash fruits and vegetables thoroughly with fresh water before cooking or serving raw.

A worker will test-taste with a clean fork or spoon only; using a soiled food preparation utensil is prohibited. Test-tasting utensils, unless disposable, must be washed after every usage. Disposable test-tasting utensils will be discarded after a single use.

Any food cooked at a lower temperature than provided below constitutes a food safety hazard and will not be served. Food service staff and resident workers involved in cooking will ensure that the following foods are cooked at the required temperatures:

- Raw eggs, fish, meat, and foods containing these items—145 degrees F or higher;
- Game animals, comminuted (ground) fish and meats, injected meats, and eggs not intended for immediate consumption—155 degrees F or higher;
- Stuffing containing fish, meat, or poultry—165 degrees F or higher; and
- Roast beef and corned beef—145 degrees F or higher.

Potentially hazardous foods that have been cooked and then refrigerated will be reheated quickly and thoroughly at a minimum of 165 degrees F before being served. Steam tables, warmers, and similar hot food-holding equipment are prohibited for the rapid reheating of these foods.

**4.1 Food Service**

After being reheated at 165 degrees F, the food may be maintained at 140 degrees F on a heated steam line or equivalent warming equipment.

The Center will obtain pasteurized milk and milk products from approved suppliers only. Manufactured milk products will meet Federal standards for quality.

The Center may use reconstituted dry milk and dry milk products for cooking and baking purposes, in instant desserts, and in whipped items. If reconstituted in-house, then the dry milk and milk products will be used for cooking purposes only. Powdered milk reconstituted in an approved milk-dispensing machine or “mechanical cow” may be used for drinking purposes. To ensure wholesomeness, an approved laboratory will test milk produced in the mechanical cow twice monthly for the presence of bacteria. The mechanical cow will be disassembled, cleaned, and sanitized before and after each use.

Powdered milkshake or ice cream mix, reconstituted in an approved ice cream machine, may be used. An approved laboratory will test dairy-based products produced in the machine for the presence of bacteria monthly. The ice cream machine will be disassembled, cleaned, and sanitized before and after each use.

Liquid, frozen, and dry eggs and egg products are pasteurized at temperatures high enough to destroy pathogenic organisms that might be present; however, because of the possibility of contamination or recontamination after opening, thawing, or reconstitution, these products will be used primarily in cooking and baking, and will be served only once before being discarded if served as a stand-alone dish.

Nondairy creaming, whitening, or whipping agents may be reconstituted in-house only if immediately stored in sanitized, covered containers not larger than 1 gallon, and cooled to 41 degrees F or lower within 4 hours of preparation.

The CF will use thermometers to ensure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.

To prevent cross-contamination, separate cutting boards must be used for raw and cooked foods. The cutting boards must be washed, rinsed, and sanitized between every use.

The FSA may require use of color-coded cutting boards, which reduce the risk of cross-contamination during food preparation.

**3. Food Cooling**

Potentially hazardous food must be cooled from 140 degrees to 70 degrees F within 2 hours of cooking, and from 70 degrees to 41 degrees F or below within 4 hours. Foods prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna, must be cooled to 41 degrees F within 2 hours of cooking/preparation.

The food service department can meet time-and-temperature requirements for cooling by using any or all of the following techniques, which expedite cooling:

- Placing the food in shallow pans;
- Separating food into smaller or thinner portions;

**4.1 Food Service**

- Using rapid cooling equipment;
- Stirring the food in a container placed in an ice water bath;
- Using containers that facilitate heat transfer;
- Adding ice as an ingredient; or
- Using a commercial blast-chiller.

During cooling, the food containers will be arranged in cooling or cold-holding equipment in a way that maximizes heat transfer through the walls of the containers.

Food protected from overhead contamination may be left uncovered during the cooling period. If the risk of overhead contamination exists, then the food must be covered loosely to facilitate heat transfer from the surface of the food.

**4. Food Thawing**

The allowed periods for thawing include the time that the food is thawed, the time to prepare food for cooking, and the time it takes under refrigeration to cool the food to 41 degrees F. Potentially hazardous food will be thawed by any or all of the following methods:

- Under refrigeration that maintains the food at 41 degrees F or below;
- Submerged in running water;
- At a water temperature of 70 degrees F or below;
- With sufficient water velocity to agitate and float off loose particles in an overflow;
- For a period that does not allow thawed portions of ready-to-eat or raw animal foods to rise above 41 degrees F; or
- For a period that does not allow any portion of raw meat to be thawed for more than 4 hours prior to being cooked.

The allowed periods for thawing include the time the food is exposed to the running water, the time to prepare food for cooking, and/or the time it takes under refrigeration to cool the food to 41 degrees F; or as part of a cooking process, provided there is continuous cooking throughout the process.

**5. Food Protection—General Requirements**

Food and ice will be protected from dust, insects, rodents, unclean utensils and work surfaces, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage, and other sources of contamination. Protection will be continuous, whether the food is in storage, in preparation, on display, or in transit.

All food storage units must be equipped with accurate easy-to-read thermometers. New heating and/or refrigeration equipment purchases will include a zone-type thermometer with temperature graduations. Refrigeration equipment will be designed and operated to maintain a temperature of 41 degrees F or below.

**4.1 Food Service****6. Hermetically Sealed Foods**

Canned food that has abnormal color, taste, or appearance, or that is contained in cans that show abnormalities such as bulging at ends, swelling, or leakage, will not be served. Unsuitable canned food will be surveyed, reported, and destroyed.

**7. Potentially Hazardous Foods**

Potentially hazardous foods are those foods that provide a good medium for bacteria growth. They include any perishable food that consists in whole or part of milk, milk products, eggs, meat, poultry, fish or shellfish, or other high-protein foods.

Potentially hazardous foods will be prepared with minimal manual contact. Such products will be prepared from chilled ingredients whenever feasible. The surfaces of equipment, containers, cutting boards, and utensils used for preparation and subsequent storage of potentially hazardous food will be cleaned effectively after each use.

Potentially hazardous food will be prepared as close to serving time as practicable. Potentially hazardous raw frozen food will be cooked from the frozen state whenever practical. Tempering will be accomplished by refrigeration at 40 degrees F or below, or with potable running water at 70 degrees F or below. The potable water technique may be used only if the product is sealed in its original container. At no time will potentially hazardous food thaw at room temperature.

All precooked, potentially hazardous, refrigerated, or frozen food intended for reheating shall be heated rapidly to a temperature above 165 degrees F.

**8. Leftovers**

Prepared food items that have not been placed on the serving line may be retained for no more than 24 hours. Leftovers offered for service a second time will not be retained for later use, but will be discarded immediately after offering. In addition, any time leftovers cannot be maintained at the minimum or maximum temperature required for food safety, they will be discarded after 2 hours at room temperature. All leftovers will be labeled to identify the product, preparation date, and time.

**G. Religious/Special Diets****1. General Policy**

All Centers will provide residents requesting a religious diet a reasonable and equitable opportunity to observe their religious dietary practice, by offering a common fare menu. "Common fare" refers to a no-flesh protein option provided whenever an entrée containing flesh is offered as part of a meal. Likewise, a common fare meal offers vegetables, starches, and other foods that are not seasoned with flesh. This menu is designed as the foundation from which modifications can be made to accommodate the religious diets of various faiths.

Information about the availability of religious and special diets will be provided to residents in a language or manner that they can understand. To participate in the common fare program, a resident will initiate an "Authorization for Common Fare Participation" form, or its equivalent, (Appendix 4.1.A) for consideration by the Chaplain, Religious Services Coordinator (RSC), or FSA. On the form, the resident will provide a written statement articulating the religious motivation for participation in the common fare program. Oral interpretation or written assistance will be

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provided to illiterate or LEP residents as necessary in completing this form. If participation is approved, then the Chaplain, RSC or FSA will forward a copy of the form for inclusion in the resident's file.

Common fare diets will be kept simple, and as similar to the food served on the main line as possible.

Although the Center Administrator has authority to remove and reinstate residents' participating in the program, ordinarily this authority is delegated to the Chaplain or RSC. When considering denying a request by a [resident] to participate in the religious diet program, or removal of a [resident] from the religious diet program, the Center Administrator, or his/her designee, shall consult with the local FOD prior to denying the request or prior to removing a [resident] from the program.

Residents whose religious beliefs require adherence to particular dietary laws or generally accepted religious guidelines and practices will be referred to the Chaplain or RSC. The Chaplain or RSC will verify the religious diet requirement by reviewing files and consulting with religious representatives and the ICE National Religious Services Coordinator, as necessary. In the case of an unorthodox request, the Chaplain or RSC is encouraged to consult established clergy contacts in the community to determine whether a request pertaining to a particular faith is appropriate and/or a request that is common in the religion but not previously experienced by the Center. Centers may employ different mechanisms to determine if a resident's request should be granted; however, the determination may not impose a substantial burden on a [resident]'s religious exercise or necessitate lengthy questionnaires or numerous interviews or amount to a religious test based on knowledge of strict religious dogma. Response to the request for a religious diet must be provided in a timely manner and documented. Absent an articulable reason to deny the request, the presumption must be that the [resident]'s request constitutes a legitimate exercise of religious belief and practice. The Chaplain or RSC and FSA shall issue specific written instructions for the implementation of the diet as soon as practicable and within 10 business days of verification.

Once a religious diet has been approved, the FSA will issue, in duplicate, a special-diet identification card.

This special-diet identification card will contain the following information:

- Resident name and alien number (A-number);
- Type of religious diet prescribed;
- Expiration date; and
- Signature of the RSC/Chaplain and FSA.

The FSA will contact the appropriate individual or department to obtain a photo of the resident and will attach the photo to the identification card. The FSA will ensure that the food service department receives one copy of the special-diet identification card. The second identification card will be issued to the resident who, at every meal, must present the card to the CS on duty. The second copy of the consultation sheet will be filed in the resident's file.



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Residents are required to present the card at each meal to receive their specified diet. Any time a resident on a religious diet refuses a meal and/or accepts the regular mainline meal in place of the religious meal, the cook on duty will notify the FSA in writing.

**2. Standard Common Fare Menu (Religious Diet)**

Common fare is intended to accommodate residents whose religious dietary needs cannot be met on the mainline. The common fare menu is based on a 14-day cycle, with special menus for the 10 Federal holidays. The menus must be certified by the FSA as exceeding minimum daily nutritional requirements and meeting RDAs. Beverages will be selected from the regular menu.

**3. Changes to the Standard Common Fare Menu**

Modifications to the standard common fare menu may be made at the local level for various reasons. For example, seasonal variations affect the availability of fresh produce in different locations, making menu modifications inevitable. Modifications also may be made to meet the requirements of various faith groups (e.g., for the inclusion of kosher and/or halal flesh-food options).

With the Center Administrator's concurrence, the FSA may make temporary, nutritionally equal substitutions for fresh seasonal produce that violates no religious dietary requirements. The Chaplain or local religious representatives will be consulted if technical questions arise. The Chaplain will escort other clergy to the common fare preparation area for frequent, random monitoring of compliance with religious dietary requirements.

**4. Hot Entree Availability**

To the extent practicable, a hot flesh-food entree will be available to accommodate residents' religious dietary needs. Hot entrees will be offered daily and will be purchased, prepared, and served in a manner that does not violate the religious requirements of any faith group.

**5. Religious Dietary Requirements**

With the exception of fresh fruits and vegetables, the Center's halal and kosher-food frozen entrees will be purchased precooked in a sealed container, heated, and served hot. Other halal and kosher-food purchases will be fully prepared, ready-to-use, and bearing the symbol of a recognized halal or kosher-certification agency. Any item containing pork or a pork product is prohibited. Only bread and margarine labeled "pareve" or "parve" will be purchased for the kosher tray.

**Plates and Utensils.** Halal and kosher trays will be served with disposable plates and utensils, except when a supply of reusable plates and utensils has been set aside for halal or kosher-food service only. Separate cutting boards, knives, food scoops, food inserts, and other such tools, appliances, and utensils will be used to prepare kosher foods, and will be identified accordingly. Separate cutting boards, knives, food scoops, food inserts, and other such tools, appliances, and utensils will be used to prepare halal foods, and will be identified accordingly. Meat and dairy food items and the service utensils used with each group will be stored in areas separate from each other. A separate dishpan will be provided for cleaning these items, if a separate or three-compartment sink is not available.

**4.1 Food Service**

Staff will train and supervise all resident food service workers involved in halal and kosher food preparation.

The RSC or Chaplain will escort visiting clergy to the preparation area for frequent, irregularly scheduled monitoring for compliance of religious dietary requirements. All visits will be documented or logged.

Centers will confirm and accommodate the resident's religious dietary requirements.

**6. Religious Requirements**

If a Center has a no-pork menu, to alleviate any confusion for those who observe no-pork diets for religious reasons, this information will be included in the Center's handbook and local supplement and the Center orientation. If the Center has a Chaplain, then he/she also will be made aware of the policy. List of ingredients will be provided upon request.

**7. Nutritional Requirements**

Common fare menus will meet RDAs. A resident who chooses the common fare menu will select beverages only from the regular menu.

**8. Instant Food and Beverages**

The food service will provide a hot-water urn for reconstituting instant beverages and foods for use by residents.

**9. Plates and Utensils**

Common fare meals will be served with disposable plates and utensils, except when a supply of reusable plates and utensils has been set aside for common fare service only. Separate cutting boards, knives, food scoops, food inserts, and other such tools, appliances, and utensils will be used to prepare common fare foods and will be identified accordingly. Meat and dairy food items and the preparation and service utensils used with each group will be stored in areas separate from each other. A separate dishpan will be provided for cleaning these items, if a separate or three-compartment sink is not available.

The Chaplain or RSC will escort visiting clergy to the common fare preparation area for frequent, irregularly scheduled monitoring of compliance with religious dietary requirements. All visits will be documented or logged.

**10. Application and Removal**

The Center Administrator, in consultation with the Chaplain, will be the approving official for a resident's removal from the common fare program.

The Center Administrator or chaplain is required to consult with the local FOD prior to denying any request for a religious diet. In addition, once a [resident] has been approved for a religious diet program, he or she may not be removed from the program without prior consultation with and concurrence from the FOD. Denial or removal from a religious diet must be documented with the date and reason and must be approved by the Center Administrator. The documentation should also include the date of FOD concurrence.

**4.1 Food Service**

Food service staff will refer to the daily roster to identify residents in the common fare program. Staff will not use this information to disparage a resident's religion or religious views or to attempt to dissuade him/her from participating in the program.

The FSA will monitor the food selections of all residents participating in the common fare program to ensure the legitimacy of their participation.

Staff will train and supervise all residents with common fare assignments.

A resident's temporary adoption of a medically prescribed diet will not affect his/her access to common fare meals. However, if a prescribed medical diet conflicts with the common fare diet, then the medical diet takes precedence.

A resident who has been approved for a common fare menu must notify the Chaplain, in writing, if he/she wishes to withdraw from the religious diet. Oral interpretation or written assistance will be provided to illiterate or LEP residents as necessary in providing written notice of withdrawal from a religious diet.

The Chaplain may recommend withdrawal from a religious diet if the resident is documented as being in violation of the terms of the religious diet program to which the resident has agreed in writing. If a resident refuses five consecutive common fare meals, then the Chaplain may recommend in writing that the Center Administrator remove the resident from the program. Residents participating in the common fare program also may consume items for sale through the Center's commissary program without risk of being removed from the program, as long as such purchases are consistent with the common fare program. However, purchase of foods items inconsistent with the common fare program may be grounds for removal from the program.

To preserve the integrity and orderly operation of the religious diet program and to prevent fraud, residents who withdraw or are removed may not be immediately re-established back into the program.

The process of re-approving a religious diet for a resident who voluntarily withdraws or who is removed ordinarily may take up to 10 days. However, repeated withdrawals, voluntary or otherwise, may result in a waiting period of up to one month before the re-approval request is decided. The decision to remove and/or reinstate a resident rests with the Center Administrator, in consultation with the Chaplain and/or local religious representatives, if necessary.

**11. Annual Ceremonial Meals**

The Chaplain, in consultation with local religious leaders as necessary, will develop the ceremonial meal schedule for the subsequent calendar year and will provide this schedule to the Center Administrator. The schedule will include the date, religious group, estimated number of participants, and special foods required. Ceremonial and commemorative meals will be served in the food service center, unless otherwise approved by the Center Administrator.

The food service department will be the only source of procurement for food items. To maintain equity in menu design, all meals will be limited to food items on the Center's master-cycle menu. To facilitate food preparation, consultations between the FSA and local religious representatives concerning appropriate menus will occur 6–8 weeks in advance of the scheduled observance. The

**4.1 Food Service**

religious services coordinator may, through the food service department, procure the ritual observance food items (in minimal quantities). Such items generally will not constitute the main entree for the ceremonial meal.

**12. Religious Fasts and Seasonal Observances**

The common fare program will accommodate residents abstaining from particular foods or fasting for religious purposes at prescribed times of year, including, but not limited to:

**Ramadan.** Muslims participating in the fast will receive the approved meals before dawn and after sundown for consumption in the food service department.

During any fast, vegetarian or hot fish dishes will replace meat entrees, as appropriate, and fasters will receive both noon and evening meals after sundown as appropriate.

Residents not participating in the common fare program but electing to observe Ramadan or other fasts will be served the main meal after sundown. If the main menu does not meet religious requirements, then the resident may participate in the common fare program during the period in question.

Each Center may provide a bag breakfast or allow residents to go to the food service department for breakfast before dawn. Bag breakfasts will contain nonperishable items such as ultra-high pasteurized milk, fresh fruit, peanut butter, dry cereal, etc. The menu for the common fare program cannot be used for a bag breakfast.

**Passover.** The Center will have the standard kosher-for-Passover foods available for Jewish residents during the 8-day holiday. The food service department will be prepared to provide Passover meals to new arrivals. Unleavened meals also will be provided during Passover.

All Jewish residents observing Passover will be served the same kosher-for-Passover meals, whether or not they are participating in the common fare program.

**Lent.** During the Christian season of Lent, a meatless meal (lunch and dinner) will be served on the food service line on Fridays and on Ash Wednesday.

**13. Common Fare Recordkeeping and Costs**

The FSA will estimate quarterly costs for the common fare program and include this figure in the quarterly budget. The FSA will maintain a record of the actual costs of both edible and non-edible items.

**H. Medical Diets****1. Therapeutic Diets**

Residents with certain conditions—chronic or temporary; medical, dental, and/or psychological—will be prescribed special diets as appropriate.

Special (therapeutic) diets will be authorized by the medical staff on Form IHSC-819 or its equivalent resident special needs form. The form will specify the type of therapeutic diets to be prescribed and the duration. Once prescribed, the diet will be made available to the resident by the next business day. This diet authorization may be renewed as medically necessary.

**4.1 Food Service**

The cook on duty will notify the FSA and/or CS in writing any time a resident on a therapeutic diet refuses the special meal or accepts the regular meal from the main food service line.

Once a therapeutic diet has been prescribed, the resident will be issued an identification card that will contain the following:

- A photo of the resident;
- The resident's name and A-number;
- The type and duration of therapeutic diet prescribed; and
- The signature of a medical staff.

Alternatively, Centers may augment the resident's Center identification to include the requirements listed above. The Health Services Administrator or designee will ensure that the food service department receives a copy of the information listed above. This information also will be placed in the resident's medical file.

Staff will notify the FSA any time a resident on a therapeutic diet refuses the therapeutic diet meal or accepts a regular main line meal.

**2. Supplemental Meals**

Medically indicated food supplements (e.g., Ensure) will be prescribed by the CMA. Snacks and supplemental feedings may be indicated for such reasons as:

- Insulin-dependent diabetes;
- A need to increase protein or calories for pregnancy, cancer, AIDS, etc.; and/or
- A need to take prescribed medication with food.

**3. Snacks**

The FSA will ensure 24-hour availability of snacks, fruits, juice, and milk via self-service within each living area.

Snack menus must have varying items that are appropriate for the different age groups of minors (e.g., young children should be provided with snacks that are not a possible choking hazard).

Snack items will be restocked at least twice daily, or more if necessary in high traffic areas (e.g., near the playgrounds and school) to ensure they are not depleted.

Snack items will not count against a daily calorie count.

Centers will ensure the timely removal of all expired items.

**I. Specialized Food Service Programs****1. Toddler and Infant Meals**

The FSA will ensure the food service program provides for the minimum nutritional needs of toddlers and infants, ranging in age from newborn to four years of age.

**4.1 Food Service**

The menus will reflect recommended governmental guidelines for Well-Baby and Well-Child growth and development.

Staff will be responsible for ensuring that infant and toddler bottles and utensils are sterilized properly, to include providing parents the necessary supplies as appropriate.

**2. Satellite Meals**

“Satellite meals” refers to food prepared in one location for consumption elsewhere (general housing units, remote living and activity areas, etc.).

The sanitary standards required in the food service department, from preparation to actual delivery, also apply to satellite meals. Satellite meals and microwave instructions (if applicable) will be posted where satellite meals are served.

Foods will be kept sufficiently hot or cold to arrest or destroy the growth of infectious organisms. The FSA will ensure that staff members understand the special handling required with potentially hazardous foods, such as meat, cream, or egg dishes. Staff must understand the critical importance of time and temperature in delivering safe food.

To prevent bacteria growth, food must be prepared and held at the proper temperatures until served. Satellite tray meals must be delivered and served within two hours of food being plated.

Foods in the potentially hazardous category will remain under refrigeration until cooking time and, after cooking, maintained at or above 140-degree F. Hot foods must be placed in a heated serving line during tray assembly. Thermal bags and carts, refrigerated carts, thermal compartment trays, etc., will be used for satellite meals.

Outside foods prepared in bulk for transportation to a remote housing unit or other location will be transported in thermal containers that maintain cold items at temperatures below 41 degrees F and/or hot items at temperatures above 140 degrees F, excluding items served within the 2-hour window for meal service.

**3. Weekend and Holiday Meal Schedule**

When weekend and/or holiday meal schedules differ from the weekday schedule, brunch service will conform to the breakfast meal pattern, and dinner service to the noon or evening meal pattern.

**4. Selection of Menu Courses**

Care must be taken to ensure that culturally diverse meals are provided in such portions as to be nutritionally adequate.

**5. Sack Meals**

Sack meals will be provided to:

- Residents being transferred;
- Residents arriving/departing between scheduled meal hours; and
- Residents in transit during scheduled meal hours.

**4.1 Food Service**

All meals will be served from established menus in the dining room or living and activity areas. In some circumstances, residents may be provided sack meals.

**Quality.** Sack meals will be of the same nutritional quality as other meals prepared by the food service. Staff will inspect all prepared sack meals for:

- Quality of contents;
- Proper wrapping; and
- Correct individual counts.

**Preparation.** Members of the food service staff will prepare sack meals for residents who are being transported to/from other locations by bus or air service (via commercial air or ICE Air Operations). While resident volunteers assigned to the food service department will not be involved in preparing meals for transportation, they may prepare sack meals for onsite consumption.

A designated member of the transportation by land or plane crew will pick up all sack meals prepared for resident transportation from the food service department. Before departing, this crew member will inspect the sacks for:

- Quality of contents;
- Proper wrapping; and
- Correct individual counts.

**Contents.** For any resident who will be transported by the Flight Operations Unit (FOU), the sack lunch must comply with FOU criteria. Otherwise, the following requirements are applicable:

Each sack will contain at least two sandwiches, of which at least one will be meat (non-pork) unless the resident is a vegetarian. Commercial bread or rolls may be preferable because they include preservatives. To ensure freshness, fresh, Center-made bread may be used only if made on the day of lunch preparation. Sandwiches will be individually wrapped or bagged in a secure fashion to prevent the food from spoiling. Meats, cheeses, etc., will be freshly sliced the day of sandwich preparation. Leftover cooked meats will not be used after 24 hours.

In addition, each sack will include:

- One piece of fresh fruit or properly packaged canned fruit (or paper cup with lid), complete with a plastic spoon;
- One ration of a dessert item, like cookies, doughnuts, and fruit bars; and
- Such extras as:
  - Properly packaged fresh vegetables, like celery sticks and carrot sticks; or
  - Commercially packaged “snack foods,” such as peanut butter crackers, cheese crackers and individual bags of potato chips.

These items enhance the overall acceptance of the lunches.



**4.1 Food Service**

Extremely perishable items such as fruit pie, cream pie, and other items made with milk, cream, or other dairy ingredients will be excluded.

**Packaging.** Whenever possible, the food service department will pack sack meals intended for bus or air service in disposable “snack boxes” that are designed for proper placement of contents and to afford maximum protection during handling, packaging, and transporting.

If necessary, paper bags may be used.

These lunches will be stored in a secured, refrigerated area until pickup. To ensure freshness, sack meals will be prepared no more than eight hours before intended consumption.

**J. Safety and Sanitation****1. General Policy**

All food service employees are responsible for maintaining a high level of sanitation in the food service department. An effective food sanitation program prevents health problems, creates a positive environment, and encourages a feeling of pride and cooperation among residents.

Food service staff will teach resident workers personal cleanliness and hygiene; sanitary methods of preparing, storing, and serving food; and the sanitary operation, care, and maintenance of equipment, including automatic dishwashers and pot and pan washers.

Head coverings, gloves, and beard guards will be encouraged, but not required, when servers are distributing pre-plated meals in individual covered serving trays.

**2. Personal Hygiene of Staff and Residents**

All food service personnel will wear clean garments, maintain a high level of personal cleanliness and practice good hygiene at all times. They will wash hands thoroughly with soap or detergent before starting work and as often as necessary during the shift to remove soil or other contaminants.

Staff and residents will not resume work after visiting the toilet without first washing their hands with soap or detergent. The FSA will post signs to this effect.

All staff and residents working in the food preparation and service area(s) will use effective hair restraints. Personnel with hair that cannot be restrained adequately will be prohibited from food service operations. Head coverings, gloves, and beard guards are encouraged, but not required, when staff members are distributing covered serving trays.

Resident food service workers will be provided with and required to use clean white uniforms while working in a food preparation area or on the serving line.

All food service personnel working in the food service department will be provided with and required to use approved rubber-soled safety shoes.

To prevent cross-contamination, staff and residents who prepare or serve food will not be assigned to clean latrines, garbage cans, sewers, drains, or grease traps, or given other such duties, during the period of food preparation. (For instance, persons just finishing cleaning garbage cans will not go directly to preparing food without bathing and changing clothes.)

**4.1 Food Service**

Only authorized food service personnel will be tasked with preparing and serving food.

Authorization for residents to perform food service work is based on approval from the Center's health services department.

Only authorized personnel will be allowed in the food preparation, storage, or utensil-cleaning areas of the food service area.

**3. Medical Examination**

All food service personnel, including staff and residents, will receive a pre-employment medical examination noting the importance of identifying any/all communicable diseases. The purpose of this examination is to exclude those who have a communicable disease in any transmissible stage or condition. Residents that perform food service work who have been absent from work for any length of time for reasons of communicable illness (including diarrhea) will be referred to health services for a determination of fitness for duty prior to resuming work.

The medical examination will be conducted in sufficient detail to determine the absence of:

- Acute or chronic inflammatory condition of the respiratory system;
- Acute or chronic infectious skin disease;
- Communicable disease that can be transmitted by food or water; and
- Acute or chronic intestinal infection.

**4. Daily Health Checks**

The CF or staff assigned to food service will inspect all resident food service workers on a daily basis at the start of each work period. Residents who exhibit signs of illness, skin disease, diarrhea (admitted or suspected), or infected cuts or boils will be removed from the work assignment and referred immediately to health services for determination of fitness for duty. The residents will return to work only after the FSA has received written clearance from health services staff. Food service staff and resident workers who have been absent from work for reasons listed immediately above must be medically cleared prior to resuming duties in the food service area.

**5. Environmental Sanitation and Safety**

All Centers will comply with the ICE Family Residential Standard on *Environmental Health and Safety*.

Centers must be clean and well-lit, and must display orderly work and storage areas.

Overhead pipes must be removed or covered to eliminate the food-safety hazard posed by leaking or dusty pipes.

Walls, floors, and ceilings in all areas must be cleaned routinely.

Centers must use ventilation hoods to prevent grease buildup and wall/ceiling condensation that can drip into food or onto food contact surfaces. Filters or other grease-extracting equipment will be readily removable for cleaning and replacement.

The area underneath sprinkler deflectors must have at least an 18-inch clearance.

**4.1 Food Service**

Centers must possess hazard-free storage areas:

- Bags, containers, bundles, etc., will be stored in tiers and stacked, blocked, interlocked, and limited in height for stability and security against sliding or collapsing;
- No flammable material, loose cords, debris, or other obvious hazards may be present; and
- No pests or infestations may be present.

Aisles and passageways will be kept clear and in good repair, with no obstruction that may create a hazard or hamper egress.

To prevent cross-contamination, kitchenware and food-contact surfaces will be washed, rinsed, and sanitized after each use and after any interruption of operations during which contamination may occur.

Centers must possess a ready supply of hot water (105–120 degrees F).

Garbage and other trash will be collected and removed as often as possible. Garbage/refuse containers will have sufficient capacity for the volume and will be kept covered, insect- and rodent-proof, and frequently cleaned. The Center will comply with all applicable regulations (local, State, and Federal) on refuse handling and disposal and the ICE Family Residential Standard on *Environmental Health and Safety*.

The premises will be maintained in a condition that prevents the feeding or nesting of insects and rodents. Outside openings will be protected by tight-fitting screens, windows, controlled air curtains, and self-closing doors.

## **6. Equipment Sanitation**

Information about the operation, cleaning, and care of equipment will be obtained from manufacturers or local distributors. A file of such reference material will be maintained in the food service department and used in developing equipment cleaning procedures for training. Sanitation will be a primary consideration in the purchase and placement of equipment.

Equipment will be installed for ease of cleaning, including the removal of soil, food materials, and other debris that collects between pieces of equipment or between the equipment and walls or floor. Older Centers that may not have the advantage of the latest designs and equipment can meet sanitation standards through careful planning, training, and supervision.

The FSA will develop a schedule for the routine cleaning of equipment.

## **7. Equipment and Utensils**

**Information.** All food service equipment and utensils will meet the National Sanitation Foundation International Standards or equivalent standards of other agencies.

**Materials.** Materials used in the construction or repair of multi-use equipment and utensils will:

- Be non-toxic, non-corrosive, non-absorbent, durable under normal use, smooth, and easily cleaned;
- Impart no odors, colors, or tastes; and

**4.1 Food Service**

- Retain their original properties under repeated use, creating no risk of food-adulteration as they deteriorate.

Paint is prohibited on any surface that may come into contact with food.

Milk-dispensing tubes will be cut diagonally about two inches from the cutoff valve. Bulk milk dispensers will be equipped with thermometers.

**Design and Fabrication.** All food service equipment and utensils (including plastic ware) will be designed and fabricated for durability under normal use.

Such equipment will be readily accessible, easily cleaned, and resistant to denting, buckling, pitting, chipping, and cracking.

Equipment surfaces not intended for contact with food, but located in places exposed to splatters, spills, etc., require frequent cleaning. Therefore, they will be reasonably smooth, washable, and free of unnecessary ridges, ledges, projections, and crevices. Upkeep of equipment surfaces will contribute to cleanliness and sanitation.

**Installation.** Equipment will be installed in accordance with the manufacturer's instructions and good engineering practices.

Installers will allow enough space between pieces of equipment and between equipment and walls to facilitate routine cleaning. Adjacent pieces may be butted together if the gap between them is sealed.

**General Cleaning Procedures.** Moist cloths for wiping food spills on kitchenware and food-contact surfaces on equipment will be clean, rinsed frequently in sanitizing solution, and used solely for wiping food spills. These cloths will soak in the sanitizing solution between uses.

Moist cloths used for non-food-contact surfaces like counters, dining table tops, and shelves will be cleaned, rinsed, and stored in the same way as the moist cloths used on food-contact surfaces. They will be used on non-food-contact surfaces only.

Detergents and sanitizers must have U.S. Food and Drug Administration (FDA) approval for food service uses.

**Manual Cleaning and Sanitizing.** A sink with at least three labeled compartments is required for manually washing, rinsing, and sanitizing utensils and equipment. Each compartment will have the capacity to accommodate the items to be cleaned. Each will be supplied with hot and cold water.

Drain-boards and/or easily movable dish-tables will be provided for utensils and equipment both before and after cleaning.

Equipment and utensils will be pre-flushed, pre-scraped and, when necessary, pre-soaked to remove gross food particles. A fourth sink compartment with a garbage-disposal is useful for these purposes and will be included in plans for Centers being built or renovated.

Except for fixed equipment and utensils too large to be cleaned in sink compartments, the following procedures apply to cleaning equipment and utensils:

**4.1 Food Service**

- Wash in the first sink compartment, using a hot detergent solution changed frequently to keep it free from soil and grease;
- Rinse in or under hot water in the second compartment, changing the rinse water frequently. This compartment will be kept empty, and a sprayer will be used for rinsing to prevent rinse water from becoming soapy or contaminated; and
- Sanitize in the third compartment using one of the following methods:
  - Immerse for at least 30 seconds in clean water at a constant temperature of 171 degrees F that is maintained with a heating device and frequently checked with a thermometer. Use dish baskets to immerse items completely;
  - Immerse for at least 60 seconds in a sanitizing solution containing at least 50 parts per million (ppm) chlorine at a temperature of at least 75 degrees F;
  - Immerse for at least 60 seconds in a sanitizing solution containing at least 12.5 ppm iodine, with a pH not higher than 5.0 and a temperature of at least 75 degrees F;
  - Immerse in a sanitizing solution containing an equivalent sanitizing chemical at strengths recommended by the U.S. Food and Drug Administration;
  - Periodically check and adjust as necessary the chemical concentrations in a sanitizing solution, using a test kit;
  - Air dry utensils and equipment after sanitizing; and/or
  - Steam-clean oversized equipment, provided the steam can be confined to the piece of equipment. Alternatively, rinse, spray, or swab with a chemical sanitizing solution mixed to at least twice the strength required for immersion sanitizing.

**Mechanical Cleaning and Sanitizing.** Spray or immersion dishwashers or devices, including automatic dispensers for detergents, wetting agents and liquid sanitizer, will be maintained in good repair. Utensils and equipment placed in the machine must be exposed to all cycles.

The pressure of the final rinse water must be between 15 and 25 pounds per square inch in the water line immediately adjacent to the final-rinse control valve.

Machine- or water line-mounted thermometers must be installed to check water temperature in each dishwasher tank, including the final rinse water.

Baffles, curtains, etc., must be used to prevent wash water from entering the rinse water tank(s) and time conveyors to ensure adequate exposure during each cycle.

Equipment and utensils must be placed on conveyors or in racks, trays, and baskets to expose all food-contact surfaces to detergent, washing, and rinsing without obstruction and to facilitate free draining.

The following temperatures must be maintained for hot-water sanitizing:

- Single-tank, stationary rack, dual-temperature machine: wash temperature of 150 degrees F; final rinse, 180 degrees F;

**4.1 Food Service**

- Single-tank, stationary rack, single-temperature machine: wash and rinse temperature of 165 degrees F;
- Multi-tank, conveyor machine: wash temperature of 150 degrees F; pumped rinse, 160 degrees F; final rinse, 180 degrees F;
- Single-tank, pot/pan/utensil washer (stationary or moving rack): wash temperature of 140 degrees F; final rinse, 180 degrees F; and
- When using a chemical spray in a single-tank, stationary rack, glass-washer, maintain a wash temperature of at least 120 degrees F, unless otherwise specified by the manufacturer.

Air-dry all equipment and utensils after sanitizing, by means of drain boards, mobile dish tables, and/or carts.

**Equipment and Utensil Storage.** Eating utensils will be picked up by their bases or handles only. Utensils will be stored in perforated pans only.

Glasses, tumblers, and cups will be inverted before storing. Other tableware and utensils may be either covered or inverted.

**8. Storage of Clothing and Personal Belongings**

Clothes and other personal belongings (e.g., jackets, shoes) will be stored in designated areas, apart from:

- Areas for the preparation, storage, and serving of food; and
- Areas for the washing and storing of utensils.

The FSA will identify space for storing resident belongings.

**9. Lavatories**

Adequate and conveniently located toilet facilities will be provided for all food service staff and resident workers.

Toilet fixtures will be of sanitary design and readily cleaned.

Toilet rooms and fixtures will be kept clean and in good repair.

Signs for proper hygiene will be prominently displayed.

Lavatories will have readily available hot and cold water.

Soap or detergent and paper towels or a hand-drying device providing heated air will be available at all times in each lavatory.

Waste receptacles will be placed conveniently near the hand-washing facilities.

**10. Pest Control**

Good sanitation practices are essential to an effective pest control program. The FSA is responsible for pest control in the food service department, including contracting the services of an outside exterminator as necessary.

**4.1 Food Service**

To protect against insects and other pests, air curtains or comparable devices will be used on outside doors where food is prepared, stored, or served.

**11. Hazardous Materials**

Only those toxic and caustic materials required for sanitary maintenance of the Center, equipment, and utensils will be used in the food service department.

All food service staff will know where and how much toxic, flammable, or caustic material is on hand, and will be aware that their use must be controlled and accounted for daily.

Resident-type combination locks will not be used to secure such material.

All containers of toxic, flammable, or caustic materials will be labeled prominently and distinctively for easy content identification.

All toxic, flammable, and caustic materials will be segregated from food products and stored in a locked and labeled cabinet or room.

Cleaning and sanitizing compounds will be stored apart from food products.

Toxic, flammable, and caustic materials will not be used in a manner that may contaminate food, equipment, or utensils or may pose a hazard to personnel or residents working with or consuming food service products.

A system for intermediate storage of received hazardous substances will secure the materials from time of receipt to time of issue.

The FSA will obtain and file for reference Material Safety Data Sheets on all flammable, toxic, and caustic substances used in the Center in accordance with the ICE Family Residential Standard on *Environmental Health and Safety*.

**12. General Safety Guidelines**

Extension cords will be UL-listed and UL-labeled and may not be used in tandem.

All steam lines within seven feet of the floor or working surface, and with which a worker may come in contact, will be insulated or covered with a heat-resistant material or otherwise be guarded from contact. Inaccessible steam lines, guarded by location, need not be protected from contact.

Machines will be guarded in compliance with OSHA Standards:

- Fans within seven feet of the floor or work surface will have blade guard openings no larger than two inches;
- Protective eye and face equipment will be used, as appropriate, to avert risk of injury. Dangerous areas presenting such risks will be conspicuously marked with eye-hazard warning signs;
- Safety shoes will be worn in FSA-designated foot hazard areas;
- Meat saws, slicers, and grinders will be equipped with anti-restart devices; and
- The Maintenance Manager will provide ground-fault protection wherever needed in the food service department and will document this protection for the FSA.



**4.1 Food Service**

Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment and materials attached to walls or ceilings will be maintained in good repair.

Lights in food production areas, utensil and equipment washing areas, and other areas displaying or storing food, equipment, or utensils will be equipped with protective shielding.

An approved, fixed fire-suppression system will be installed in ventilation hoods over all grills, deep fryers, and open flame devices. A qualified contractor will inspect the system every six months. The fire-suppression system will be equipped with a locally audible alarm and connected to the control room's annunciator panel.

Hood systems will be cleaned after each use to prevent grease build-up, which constitutes a fire risk. All deep fryers and grills will be equipped with automatic fuel or energy shut-off controls.

**13. Mandatory Inspection**

The Center Administrator will implement written procedures requiring the food service administrator or designee to conduct the weekly inspections of all food service areas, including dining, storage, equipment, and food-preparation areas.

All of the food service department equipment (e.g., ranges, ovens, refrigerators, mixers, dishwashers, garbage disposal) requires frequent inspection to ensure their sanitary and operable condition. Staff will check refrigerator and water temperatures daily and record the results. The FSA or designee will verify and document requirements of food and equipment temperatures.

The FSA or CS will inspect food service areas at least weekly.

An independent, external inspector will conduct annual inspections to ensure that the food service facilities and equipment meet governmental health and safety codes.

Personnel inspecting the food service department will note any recommended corrective actions in a written report to the Center Administrator. The Center Administrator will establish the date by which identified problems will be corrected.

Checks of equipment temperatures will follow this schedule:

- Dishwashers: every meal;
- Pot and pan washers: daily, if water in the third compartment of a three-compartment sink is used for sanitation and the required minimum temperature is 180 degrees F; and
- Refrigeration/freezer equipment (walk-in units): site-specific schedule, established by the FSA.

All temperature-check documentation will be filed and accessible.

The FSA will develop a cleaning schedule for each food service area and post it for easy reference. All areas (e.g., walls, windows, vent hoods) and equipment (e.g., chairs, tables, fryers, ovens) will be grouped by frequency of cleaning (e.g., after every use, daily, weekly, monthly, semiannually, or annually).

## **K. Food Storage, Receiving, and Inventory**

### **1. General Policy**

Because control and location of subsistence supplies are site-specific, each FSA will establish procedures for storing, receiving, and inventorying food.

On the purchase request for potentially dangerous items (e.g., knives, mace, yeast, nutmeg, cloves, and other items considered contraband if found in a resident's possession), the FSA will mark them "hot," signaling the need for special handling.

### **2. Receiving**

The first step in receiving food is matching incoming items with the invoice, purchase order, and control specifications. Weekly deliveries of fresh produce, meats, and other perishable items will be inspected for freshness, quality, and general appearance. Staff will supplement their inspections of perishables with random checks of weight, count, size, etc.

Receiving staff will examine deliveries promptly to determine acceptability both for quantity and quality, consistent with the contract. If immediate examination is not practical upon delivery because inspection will involve time-consuming tests, then the vendor will receive a receipt confirming delivery of a particular number/gross weight of containers in good condition (or, if not, noting exceptions).

### **3. Food Receipt and Storage**

The following procedures apply when receiving or storing food.

Inspect the incoming shipment for damage, contamination, and pest infestation. Rats, mice, or insects may be hiding in the middle of a pallet.

Promptly remove damaged pallets and broken containers of food. Separate damaged food containers from other food and store separately for disposal. Take special care in handling flour, cereal, nuts, sugar, chocolate, and other such products highly susceptible to contamination.

Upon finding that an incoming food shipment has been contaminated, contact the FSA/CS for instructions on the next course of action.

Store all food item products at least six inches from the floor and at least two inches from the walls to facilitate pest-control measures. A painted line may guide pallet placement. Wooden pallets may be used to store canned goods and other non-absorbent containers, but not to store dairy products or fresh produce.

Store perishables at 35–40 degrees F to prevent spoilage and other bacterial action, and maintain frozen foods at or below 0 degrees F.

Prevent cross-contamination by storing foods requiring washing or cooking separately from those that do not.

For rapid cooling, use shallow pans (depth not to exceed four inches). Cover or otherwise shield refrigerated food from contamination.

**4.1 Food Service**

Do not store food in locker rooms, toilet rooms, dressing rooms, garbage rooms, or mechanical rooms, or under sewer lines, potentially leaking water lines, open stairwells, or other sources of contamination.

**4. Inventory**

Determining inventory levels and properly receiving, storing, and issuing goods are critical to controlling costs and maintaining quality. While the FSA will base inventory levels on Center needs, each Center will always stock a 15-day food supply at a minimum.

Procedures for checking the quality and quantity of food and other supplies and their distribution to the point of use will comply with industry-established policies and financial management practices.

Food service inventory represents significant financial resources converted into goods in the form of food, supplies, and equipment. All food service personnel must be aware of the value of the inventory and of his/her responsibility for the security of these goods upon receipt.

The master-cycle menus offer guidance to managers planning inventory levels.

Inventory levels will be established, monitored, and periodically adjusted to correct excesses or shortages.

**5. Stock Rotation**

Each Center will establish a written stock rotation schedule.

**6. Perpetual Inventory**

“Perpetual inventory” is the process of recording all food service purchases and food distribution. Although details may vary, the information recorded always includes the quantity on hand, quantity received, quantity issued, and unit cost for each food and supply item. The FSA will maintain perpetual inventory records on all food service products and supplies.

Perpetual inventory records are important because they provide the FSA with up-to-date information on product usage, and act as a guide for further purchases.

For accurate accounting of all food and supplies, a perpetual inventory record is insufficient. An official inventory of stores on hand must be conducted annually.

All food service departments will complete a physical inventory of the warehouse quarterly.

**7. The Dry Storeroom**

Proper care and control of the dry storeroom involves the following:

- Keeping the storeroom dry and cool (45–80 degrees F) to prevent swelling of canned goods and general spoilage;
- Sealing or otherwise making impenetrable all wall, ceiling, and floor openings to prevent entry of dirt, water, pests, etc.;
- Vigilant housekeeping to keep the room clean and free from rodents and vermin (a drain for flushing is desirable);

**4.1 Food Service**

- Securing the storeroom under lock and key to prevent pilferage—the FSA is responsible for key distribution; and
- Properly approved food safe containers.

**8. Refrigerators**

Butter, milk, eggs, and cream will be separated from foods having strong odors. Eggs will not be subjected to freezing temperatures.

Refrigeration units will be kept under lock and key when not in use. Walk-in boxes will be equipped with safety locks that require no more than 15 pounds of pressure to open easily from the inside. If latches and locks are incorporated in the door's design and operation, then the interior release mechanism must open the door with the same amount of pressure even when locks or bars are in place.

Whether new or used, the inside lever of a hasp-type lock must be able to disengage locking devices and provide egress. The FSA, along with the safety manager, will review the walk-in freezers and refrigerators to ensure that they operate properly.

**References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Environmental Health and Safety
- ICE Family Residential Standard on Disability Identification, Assessment, and Accommodation
- ICE Family Residential Standard on Key and Lock Control
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Tool Control
- ICE Family Residential Standard on Voluntary Work Program
- FDA Public Health Services Food Code
- National Sanitation Foundation International Standards

## 4.2 Hunger Strikes

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects residents' health and well-being by monitoring, counseling, and providing appropriate treatment to any resident who is on a hunger strike.

Nothing in this standard is intended to limit or override the exercise of sound medical judgment by the clinical medical authority (CMA) responsible for a resident's medical care. Each case must be evaluated on its own merits and specific circumstances, and treatment will be given according to accepted medical practice.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Adult residents who declare themselves on hunger strike or who do not eat for 72 hours will be referred to the medical unit for evaluation and possible treatment by medical and mental health personnel. Prior to 72 hours, staff may refer an adult resident who is not eating for medical evaluation. When clinically indicated, medical staff may refer the resident to a hospital. Minors observed or known to have missed three consecutive meals or four meals in any two-day period may be referred for medical evaluation (after consultation with the parent/guardian) to determine if medical or mental health intervention is required.

**4.2 Hunger Strikes**

2. Center staff will immediately notify the ICE/Enforcement and Removal Operations (ERO) Field Office Director (FOD), ICE Health Services Corps (IHSC), and the Juvenile and Family Residential Management Unit (JFRMU) Chief when a resident is on a hunger strike, declared or otherwise.
3. Medical staff will monitor carefully and document the resident's health, as well as the resident's intake of foods and liquids. The CMA, designated physician, or treating medical staff will conduct a full clinical and mental health assessment and evaluation, and recommend a course of treatment, intervention, or follow-up.
4. When a family member is on hunger strike and when medically advisable, all members of that family will be placed in their own room under one-on-one supervision.
5. Medical, mental health, or hospital staff will offer counseling to the adult resident or the minor's parent/guardian (if the minor is on hunger strike) regarding medical risks and residents will be encouraged to end the hunger strike or accept medical treatment.
6. An adult resident's refusal of medical treatment, or a parent's/guardian's refusal of treatment for his/her child, will be documented in the resident's medical file.
7. Involuntary medical treatment will be administered only with medical, psychiatric, and legal safeguards.
8. A record will be established that notes interactions with the striking resident, the provision of food, attempted and successfully administered medical treatment, and communications among the CMA, Center Administrator, and ICE/ERO regarding the striking resident.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Hunger Strikes* dated 12/21/2007.

## Expected Practices

### A. Staff Training

All staff will be trained initially and annually thereafter to recognize the signs of a hunger strike, and to implement the procedures for referral for medical assessment and for management of a resident on a hunger strike.

### B. Initial Referral

Procedures for identifying and referring a resident suspected or announced to be on a hunger strike to medical staff will include obtaining from qualified medical personnel an assessment of whether the resident's action is reasoned and deliberate, or the manifestation of a mental illness.

Centers will immediately notify the FOD (or designee) and the JFRMU Chief immediately when a Center resident begins a hunger strike. The FOD and JFRMU Chief will follow current ICE policy for reporting significant incidents.

**4.2 Hunger Strikes**

Staff will consider any adult resident observed to have not eaten for 72 hours to be on a hunger strike and will refer him/her to the CMA for evaluation and management.

Minors observed or known to have missed three consecutive meals or four meals in any two-day period may, after consultation with the parent/guardian, be referred for medical evaluation to determine if medical or mental health intervention is required.

If an adult resident declares a hunger strike, then Center staff will develop a plan to ensure services continue to be provided for the resident's child(ren), to include food, medical/mental health monitoring, personal hygiene, activities, and education as needed.

If it is determined that an adult resident on a prolonged hunger strike has become physically incapable of caring for his/her child(ren), IHSC, the respective FOD, and the JFRMU Chief will determine appropriate action, which may include removing the resident from the residential program. Separation of a parent/guardian from his/her child(ren) will never be used as a threat to discourage hunger strikes. However, if the parent/guardian is not capable of caring for his/her child(ren) (as, for example, in the case of hospitalization for more than 3 days), then separation may be necessary at the direction of the FOD and JFRMU Chief.

**C. Initial Medical Evaluation and Management**

Medical staff will monitor the health of any resident on a hunger strike. If a resident engaging in a hunger strike has been diagnosed previously with a mental health condition, or is incapable of giving informed consent due to age or illness, then appropriate medical/administrative action will be taken in the best interest of the resident. Parents/guardians will be given the opportunity to provide informed consent for their children.

During the initial evaluation of any resident on a hunger strike, medical staff will:

- Measure and record height and weight;
- Measure and record vital signs;
- Perform urinalysis;
- Conduct psychological/psychiatric evaluation;
- Examine general physical condition; and
- If clinically indicated, proceed with other necessary studies.

The CMA or designated physician will be responsible for hunger strike management and may:

- Order free movement restrictions to monitor the resident's condition and treatment more effectively;
- Order placement of the resident and his/her family members in a single-family room; and
- Order food and liquid intake and output tracking.

Medical staff will measure and record weight and vital signs at least once every 24 hours during the hunger strike and repeat other procedures as medically indicated.



**4.2 Hunger Strikes**

Qualified medical personnel may modify or augment standard treatment protocols when medically indicated.

Medical staff will record all examination results in the resident's medical file. The Center Administrator will regularly apprise the FOD and JFRMU Chief of the determinations and actions taken.

**D. Food and Liquid Intake and Output**

When a family member is on hunger strike, the CMA or designated physician may order that all members of that family be placed in their own room under one-on-one supervision and will document the reasons for that decision. This decision will be reviewed every 72 hours by the Center Administrator and medical personnel. All minors who are not on a hunger strike will continue to receive all services as required by these standards. Center staff will monitor the food and liquid intake of any resident on a hunger strike.

After consultation with the CMA, the Center Administrator may require staff to:

- Measure and record food and water intake and output in the medical record using an "IHSC Hunger Strike" form or its equivalent;
- Monitor the resident taking into consideration the resident's mental health needs;
- Deliver three meals per day to the resident's room unless otherwise directed by the CMA—staff will physically deliver each meal regardless of the resident's response to an offered meal; and
- Provide an adequate supply of drinking water or other beverages.
- Remove from the family's resident's room all food items not authorized by the CMA. During the hunger strike, the resident's and his/her family members' purchase of commissary or vending machine food and beverages will be documented, and this information will be provided daily to the Center health care provider.

**E. Resident Informed Consent and Refusal of Treatment**

An adult resident has a right to refuse medical treatment on behalf of him/herself and his/her minor child(ren). If an adult resident refuses the initial medical evaluation or any treatment or other medical procedures for him/herself or his/her minor child, then medical staff will explain to the adult resident the medical risks associated with refusal of treatment, attempt to secure the adult resident's signature on a "Refusal of Treatment" form, and document treatment efforts in the resident's or child's medical record. If the adult resident will not cooperate by signing, then staff will note this on the "Refusal of Treatment" form. Medical staff will monitor any adult resident refusing medical treatment on behalf of him/herself or his/her minor child, as well as the minor child(ren), to evaluate whether the hunger strike poses a risk to the resident's or child's life or long-term health. If medically necessary, Centers may transfer the hunger striking resident to a community hospital or other medical facility appropriately equipped for treatment.

**4.2 Hunger Strikes**

The physician may recommend involuntary treatment when clinical assessment and laboratory results indicate the adult or minor resident's weakening condition threatens the life or long-term health of the resident. Before involuntary medical treatment is administered, staff will make reasonable efforts to educate and encourage the resident (or the minor's parent/guardian) to accept treatment voluntarily. Medical staff will explain to the resident (or the minor's parent/guardian) the medical risks associated with refusal of treatment and will document treatment efforts in the resident's medical record. Involuntary medical treatment will be administered in accordance with established guidelines and applicable laws and only after the CMA determines the resident's life or health is at risk.

NOTE: Centers are expected to adhere to both these standards and any state licensing requirements; when there is a conflict, state licensing requirements will prevail. Centers should seek assistance from the FOD and JFRMU Chief as needed.

The Center Administrator will notify ICE/ERO and the JFRMU Chief if a resident is refusing treatment, and the Health Services Administrator will notify the respective ICE/ERO FOD and JFRMU Chief in writing of any proposed plan to feed the resident involuntarily if the hunger strike continues. Under no circumstances may a Center Administrator issue involuntary medical treatment without authorization from ICE/ERO and the JFRMU Chief.

The FOD, in consultation with the CMA, will then contact the Office of the Principal Legal Advisor and the U.S. Attorney's Office with jurisdiction. After discussing the case, the attorneys will recommend whether or not to pursue a court order. ICE policy is to seek a court order to obtain authorization for involuntary medical treatment. If a court determines that it does not have jurisdiction to issue such an order, or a hospital refuses to administer involuntary sustenance pursuant to a court order, then ICE/ERO may consider other action if the hunger strike continues.

If a court order is to be pursued, then ICE/ERO will work with the local ICE OPLA office and the U.S. Attorney's Office to make the arrangements for a court hearing.

Medical staff will:

- Document all treatment efforts and each treatment refusal in the resident's medical record;
- Continue clinical and laboratory monitoring as necessary until the resident's life or health is out of danger; and
- Continue medical and mental health follow-up as necessary.

Records will be kept of all interactions with the hunger-striking resident, the provision of food, attempted and successfully administered medical treatment, and communications among the CMA, Center Administrator, and the FOD (or designee) and JFRMU Chief regarding the striking resident. Records will be kept in accordance with the requirements in the Family Residential Standard on Health Care.

**F. Discharge from Treatment**

Only a physician may order the termination of hunger strike treatment; this order will be documented in the resident's medical record. Center staff will also note in the resident file when a resident ends his/her hunger strike.

The Center health care provider will continue to provide appropriate medical and mental health follow-up after the end of the hunger strike.

The CMA also will notify the respective FOD, JFRMU Chief, and Center Administrator of the order.

**References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- National Commission on Correctional Health Care, Standards for Health Services in Jails

## 4.3 Health Care

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents have timely access to appropriate and necessary health care (medical, dental, and mental health care, including emergency services).

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents will have access to a continuum of health care services including screening, prevention, health education, diagnosis, and treatment.
2. The Center will have a mental health staffing component on call to respond to the needs of the resident population 24 hours a day, 7 days a week.
3. Residents will be informed orally or in a manner the resident understands about how to access, appeal, or communicate concerns about health services.
4. Residents will be able to request health services on a daily basis and will receive timely follow-up.
5. Residents will receive continuity of health care from time of admission to time of transfer, release, or removal. Residents who have received health care and are being released from custody or removed will receive a discharge plan that includes a written summary of health care provided, any medically necessary medication, and referrals to community-based

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providers as medically appropriate.

6. A resident who is determined to require health care beyond Center resources will be transferred in a timely manner to an appropriate facility. Centers will maintain and annually update a written list of referral sources, including emergency and routine care.
7. A transportation system will provide timely access to health care services that are not available at the Center. Procedures for use of this transportation system will include: (a) prioritization of medical needs; (b) urgency (such as the use of an ambulance instead of standard transportation); (c) transfer of medical information and medications; and (d) safety and security concerns of all persons.
8. A resident who requires close, chronic, or convalescent health supervision will be treated for their condition(s) in accordance with a written treatment plan conforming to accepted medical practices for the condition in question, approved by a licensed physician, dentist, or mental health practitioner.
9. Emergency medical and mental health services will be available to all residents, 24 hours per day.
10. Centers will follow age-appropriate, current Centers for Disease Control and Prevention (CDC) guidelines and the American Academy of Pediatrics (AAP) Redbook for screening, preventing, and controlling infectious and communicable diseases.
11. Occupational Safety and Health Administration (OSHA) and applicable state guidelines for managing bio-hazardous waste and decontaminating medical and dental equipment will be followed.
12. Residents with chronic conditions will receive chronic care and treatment, as needed, that includes medication monitoring, diagnostic testing, and chronic care clinics.
13. The Health Services Administrator (HSA) will notify the Center Administrator and ICE/Enforcement and Removal Operations (ERO), in writing, of any resident whose medical or mental health needs require special accommodation in such matters as housing, transfer, or transportation.
14. Each newly admitted resident will receive a comprehensive medical, dental, and mental health intake screening within 12 hours of arrival at each Center. This examination will include screening for infectious diseases, pain, acute and chronic health conditions, mental health, and resident concerns. Any identified issues will be further evaluated and referred for treatment as needed. Residents who appear upon arrival to raise urgent medical or mental health concerns will receive priority in the intake screening process.
15. Each Center's health care provider will conduct a comprehensive, thorough health assessment—including a physical examination and mental health screening—on each adult resident within 14 calendar days of arrival, and on each minor no later than 48 hours, excluding weekends and holidays, after admission to the Center. Residents with acute or chronic health condition(s) identified during the intake screening process will be referred for a health assessment as soon as possible, but no later than two working days after

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admission to the Center. This comprehensive health assessment also screens minors for special needs that may not have been identified at the initial intake screening, such as mental illness, disabilities, and other physical or chronic conditions that may require special treatment or services. Minors identified as having any special needs will be referred by the medical professional conducting the comprehensive health assessment to appropriate specialized treatment services. For the purposes of this more comprehensive health assessment, a qualified, licensed health care provider includes the following: physicians, physician assistants, nurses, nurse practitioners, or others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for patients.

16. Qualified, licensed health care professionals will assess and provide treatment to each resident on the basis of his/her medical, dental, and mental health needs. Residents will be referred for evaluation, diagnosis, treatment, and stabilization as medically indicated.
17. Medical or mental health staff will notify Center housing or educational staff of any physical or mental health condition that would impact the educational accommodation or safe housing of the resident upon identification of such condition.
18. Residents with mental health conditions will be referred to a mental health provider, as necessary, for detection, diagnosis, treatment, and stabilization to prevent psychiatric deterioration while in residence. Centers will make available crisis intervention services for residents who experience acute mental health episodes.
19. Mental health providers will approach care in a trauma-informed manner and promote Center wide use of trauma informed care to address past and present trauma in detention, and to better ensure resident safety.
20. Use of restraints on pregnant women and for medical or mental health purposes will be subject to the requirements specified in the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints* and applicable state and federal law. At no time will a pregnant resident be restrained, absent truly extraordinary circumstances that render restraints absolutely necessary.
21. Residents experiencing severe, life-threatening intoxication or withdrawal symptoms will be transferred immediately for an off-site emergency department evaluation.
22. Pharmaceuticals and non-prescription medicines will be secured, stored and inventoried.
23. Prescriptions and medications will be ordered, dispensed, and administered in a timely manner and as prescribed by a licensed health care professional. This will be conducted in a manner that seeks to preserve the privacy and personal health information of residents.
24. Health care services will be supervised by a designated clinical medical authority (CMA).
25. Health care services will be provided by a sufficient number of appropriately trained and qualified personnel, whose duties are governed by thorough and detailed job descriptions and who are licensed, certified, credentialed, and/or registered in compliance with applicable state and federal requirements.

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26. Center staff and health care personnel will be trained initially and annually in the proper use of emergency medical equipment and will respond to health-related emergency situations.
27. Information about each resident's health status will be treated as confidential, and health records will be maintained separately from other resident files in accordance with medical recordkeeping requirements of applicable state and federal laws. Health records will be accessible only in accordance with written procedures and applicable laws. Health record files on each resident will be well organized, available to all practitioners, and properly maintained and safeguarded.
28. When a resident is transferred to another Center, the transferring Center will ensure appropriate health records are transferred in accordance with established ICE policy.
29. Informed consent standards will be observed and adequately documented. Staff will make reasonable efforts, including the use of language interpretation services as needed, to ensure that residents understand their health condition and care.
30. Medical and mental health interviews, screenings, appraisals, and examinations, and the administering of medication will be conducted in settings that respect residents' privacy in accordance with safe and secure Center operations.
31. A resident's request to see a health care provider of the same gender will be accommodated where possible; when not feasible, a same-gender chaperone will be provided. When care is provided by a health care provider of the opposite gender, a resident will be offered a same-gender chaperone, and provided the chaperone whenever the offer is accepted.
32. As appropriate, adequate space and staffing for the use of services of the ICE Tele-Health Systems, inclusive of tele-radiology (ITSP), tele-medicine, and tele-psychiatry will be provided.
33. All residents will receive medical and mental health screenings, interventions, and treatments for gender-based and other abuse and/or violence, including sexual assault and domestic violence.
34. This standard and the implementation of this standard will be subject to internal review and a quality assurance system to ensure the quality of care.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Health Care* dated 12/21/2007.

## Expected Practices

### A. General

Every Center will directly or contractually provide its resident population with the following:



**4.3 Health Care**

- Initial medical, mental health, and dental screening (to include pregnancy tests for females ages 10-56);
- Medically necessary and appropriate medical, dental, mental health care, and pharmaceutical services;
- Comprehensive, routine and preventive health care, as medically indicated;
- Emergency care;
- Specialty health care;
- Timely responses to medical complaints;
- Hospitalization as needed within the local community; and
- Staff or professional language services necessary to ensure meaningful access to care for residents with limited English proficiency (LEP) during any medical or mental health appointment, sick call, treatment, or consultation.

**B. Designation of Authority**

A designated HSA or the equivalent will have overall responsibility for health care services pursuant to a written agreement, contract, or job description. The HSA is a physician or health care professional and will be identified to residents.

The designated CMA at the Center will have overall responsibility for medical clinical care pursuant to a written agreement, contract, or job description. The CMA will be a medical doctor or doctor of osteopathy. The CMA may designate a clinically trained professional to have medical decision-making authority in the event that the CMA is unavailable.

When the HSA is other than a physician, final clinical judgment will rest with the Center's designated CMA. In no event will clinical decisions be made by non-clinicians.

The HSA will be authorized and responsible for making decisions about the deployment of health resources and the day-to-day operations of the health services program. The CMA together with the HSA establishes the processes and procedures necessary to meet the medical standards outlined herein.

All Centers will provide health care staff and sufficient support personnel to meet these standards. A staffing plan that identifies the positions needed to perform the required services will be reviewed by the HSA or equivalent at least annually.

Health care personnel perform duties within their scope of practice for which they are credentialed by training, licensure, certification, job descriptions, and/or written standing or direct orders by personnel authorized by law to give such orders.

The Center Administrator, in collaboration with the CMA and HSA, negotiates and maintains arrangements with nearby medical facilities or health care providers to provide required health care not available within the Center. The Center Administrator will identify staff to transport and remain with residents for the duration of any off-site treatment or hospital admission.

### **C. Notifying Residents about Health Care Services**

In accordance with the ICE Family Residential Standard on *Resident Handbook*, the Center will provide each resident, upon admittance, a copy of the resident handbook and local supplement, as appropriate, in which procedures to access health care services are explained.

Health care practitioners should explain any rules about mandatory reporting and other limits to confidentiality in their interactions with residents. Informed consent will be obtained from adult residents on behalf of themselves and their minor child(ren) prior to providing treatment (absent medical emergencies). Consent forms and refusals will be documented and placed in the resident's medical file.

In accordance with the section on Orientation in the ICE Family Residential Standard on *Admission and Release*, access to health care services and the sick call and medical grievance processes will be included in the orientation curriculum for newly admitted residents.

### **D. Translation and Language Access for Residents with Limited English Proficiency**

Centers will provide appropriate interpretation and other language services for LEP residents related to medical and mental health care. When appropriate staff interpretation is not available, Centers will make use of professional interpretation services. Residents will not be used for interpretation services during any medical or mental health service. Interpretation or translation services by other residents will only be utilized in an emergency medical situation.

Centers will post signs in medical intake areas in English, Spanish, and languages spoken by other significant segments of the Center's resident population, listing what language assistance is available during any health care (including mental health) treatment, diagnostic test, or evaluation.

### **E. Facilities**

#### **1. Examination and Treatment Area**

Initial medical, dental, and mental health interviews, examinations, and procedures will be conducted in settings that respect residents' privacy. Adequate space and equipment will be furnished in all Centers so that all residents may be provided basic health examinations and treatment in private while ensuring safety.

Staff will monitor resident children while their parents are being screened (so the children are not privy to their parent's screening conversations) unless the parent wants his/her child(ren) to remain with them during the screening.

The health care examination area will be in an area restricted from general resident access. A waiting area will be located in the medical unit under the direct supervision of Center staff. A resident toilet and drinking fountain will be accessible from the waiting area.

#### **2. Health Care Records**

Health care records will be kept separate from resident records and stored in a securely locked area within the medical unit.

**4.3 Health Care****3. Medical Housing**

If there is a specific area separate from other housing areas where residents are admitted for health observation and care under the supervision and direction of health care personnel, then consideration will be given to the resident's and his or her child(ren)'s age, gender, and medical requirements. The following minimum standards for care will be met:

- Physician at the Center or on call 24 hours per day;
- Qualified health care personnel on duty 24 hours per day when patients are present;
- Adequate number of Center staff members to address the reasonable needs of the patients;
- Appropriate documentation in the medical record describing the need for medical housing placement and the care/monitoring to be provided;
- Compliance with all applicable laws, regulations, and policies;
- Access for residents in medical housing to all ICE Family Residential Standard-required services such as telephone, recreation, and legal access and materials, consistent with their health care conditions;
- The HSA will advise ICE/ERO whether the isolated resident's family members may be housed with the resident. When not housed together, family members will have unfettered access to each other consistent with the isolated resident's health care condition; and
- Prior to placing a resident with a mental illness in medical housing, a determination will be made by a medical or mental health professional that placement in medical housing is medically necessary.

**F. Communicable Disease and Infection Control****1. General**

Each Center will have written plans that address the management of infectious and communicable diseases, including screening, prevention, education, identification, monitoring and surveillance, immunization (when applicable), treatment, follow-up, isolation (when indicated), and reporting to local, state, and federal agencies.

Plans will include:

- Coordination with local public health authorities;
- Ongoing education for staff and residents;
- Control, treatment, and prevention strategies;
- Protection of resident confidentiality;
- Media relations, in coordination with the local public affairs officer (PAO);
- Procedures for the identification, surveillance, immunization, follow-up, and isolation of patients;

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- Hand hygiene compliance program;
- Management of infectious diseases and reporting them to local and/or state health departments in accordance with established guidelines and applicable laws; and
- Management of bio-hazardous waste and decontamination of medical and dental equipment that complies with applicable laws and the ICE Family Residential Standard on *Environmental Health and Safety*.

Centers will comply with current and future plans implemented by federal, state, or local authorities addressing specific public health issues including communicable disease reporting requirements. Infectious and communicable disease control activities will be reviewed and discussed with ICE in the quarterly administrative meetings as described in this standard.

Designated health care staff will report all residents diagnosed with a communicable disease of public health significance to ICE and to the local or state health department in accordance with state and local laws.

If an adult resident must be temporarily separated or isolated from his/her accompanying child(ren) for health reasons, the Center Administrator will submit a supervision plan to ICE/ERO for each affected child. As detailed in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*, families may be separated due to medical issues only where medically necessary or to protect the life, health, or safety of the child(ren) or parent/guardian. Centers must secure approval from the Field Office Director (FOD) and JFRMU Chief whenever separation is deemed medically necessary.

Further, health care staff will secure informed consent from the child's parent/guardian in all instances in which health care is provided to a minor child.

## 2. Tuberculosis (TB) Management

As indicated in the section of this standard on Medical and Mental Health Screening of New Arrivals, screening for TB is initiated at intake and in accordance with CDC guidelines and the American Academy of Pediatrics Redbook.

All new arrivals will receive screening for symptoms consistent with pulmonary TB within 12 hours of intake and in accordance with CDC guidelines ([www.cdc.gov/tb](http://www.cdc.gov/tb)) and the American Academy of Pediatrics (AAP) Redbook. For residents who have been in continuous law enforcement custody, symptom screening plus documented negative TB testing within one year of arrival may be accepted for intake screening purposes.

Health care personnel who perform screenings must have appropriate licenses and verified competency in age-appropriate technical specifications. See [\*American College of Radiology \(ACR\) - Society for Pediatric Radiology \(SPR\) - Society for Thoracic Radiology \(STR\) Practice Parameter for the Performance of Chest Radiography\*](#) and [\*ACR-SPR-STR Practice Parameter for the Performance of Portable \(Mobile Unit\) Chest Radiography\*](#).

**Post-Screening Evaluation.** Residents of any age with symptoms of TB or abnormal screening results:

**4.3 Health Care**

- Refer residents who have any symptom suggestive of TB disease, or any resident with an abnormal screening suggestive of pulmonary TB disease, to a medical provider for medical consultation. If no medical provider is on duty at the time of identification, then admit the resident with suspected TB to an airborne infection isolation (AII) room, if available onsite, temporarily pending prompt evaluation;
- If no AII room is available onsite, then refer the resident to the nearest tertiary care facility for isolation and evaluation in consultation with the CMA or designee; and
- Fit the resident with a tight-fitting surgical mask (without an exhalation valve) when not in an AII room until determined by a provider to be noncontagious.

For any minor residents with a positive screening:

- Perform a directed physical examination for all children and adolescents with a positive screening to assess for pulmonary or extrapulmonary disease. For more information about TB disease or risks for TB-drug toxicity, see [American Thoracic Society/Infectious Diseases Society of America/Centers for Disease Control and Prevention Clinical Practice Guidelines: Diagnosis of Tuberculosis in Adults and Children](#), [American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis](#), and [American Academy of Pediatrics | Red Book®: 2018 Report of the Committee on Infectious Diseases](#);
- Pediatric residents with suspected TB disease (extrapulmonary or pulmonary) should be referred to a specialist with expertise in childhood TB to obtain gastric aspirates for smear and culture;
- A pediatric TB expert should be involved in the treatment of TB in children and in the management of infants, young children, and immunocompromised children who are known to have been exposed to someone with infectious TB disease;
- Consult an expert through one of the TB Centers of Excellence.

Annual or periodic TB testing will be implemented in accordance with CDC guidelines. The annual TB screening method should be appropriately selected with consideration given to the initial screening method used or documented during intake. Annual CXRs are not required or recommended for minors or adults.

Residents with symptoms suggestive of TB, or with suspected or confirmed active TB disease based on clinical and/or laboratory findings, will be placed in a functional AII room with negative pressure ventilation and be promptly evaluated for TB disease. Patients with suspected active TB will remain in AII until determined by a qualified health care provider to be noncontagious in accordance with CDC guidelines.

For all patients with confirmed and suspected active TB, designated medical staff will:

- Report all patients to local and/or state health departments within one working day of meeting reporting criteria and in accordance with established guidelines and applicable

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laws, identifying them as being in ICE custody and by their alien numbers [A-numbers]);

- Report all patients with suspected or confirmed TB to IHSC within one working day of initial identification with suspected or confirmed TB disease;
- Promptly report any movement of TB patients, including hospitalizations, other transfers, releases, or removals/deportations to the local and/or state health department and IHSC.
- Notifications to local or state health departments of release or removal must include the intended destination address, including apartment numbers and telephone numbers.

Reporting will include names, aliases, date of birth, A-number, TB status, available diagnostic and lab results, treatment status (including drugs and dosages), treatment start date, a summary case report, and a point of contact and telephone number for follow-up.

When treatment is indicated, multi-drug, anti-TB therapy will be administered using directly observed therapy in accordance with American Thoracic Society and CDC guidelines and the AAP Redbook. For patients with drug-resistant or multi-drug-resistant TB, the state or local health department must be consulted to establish a customized treatment regimen and treatment plan. Patients receiving anti-TB therapy will be provided with a 15-day supply of medications and appropriate education when transferred, released, or deported, in an effort to prevent interruptions in treatment until care is continued in another location.

Treatment for latent TB infection (LTBI) will not be initiated unless active TB disease is ruled out or staff is advised by a pediatric TB expert to initiate LTBI treatment for a child with known exposure to contagious TB.

Designated health care staff will coordinate with IHSC and the local and/or state health department to facilitate a transnational referral for continuity of care. Designated health care staff will collaborate with the local and/or state health department on TB and other communicable diseases of public health significance.

**3. Significant Communicable Disease**

Designated health care staff will report all residents diagnosed with a communicable disease of public health significance to the local or state health department in accordance with applicable state and local laws, as well as to IHSC, the FOD, and the JFRMU Chief. Designated health care staff will also notify IHSC of any contact or outbreak investigations involving ICE residents exposed to a significant communicable disease without known immunity. Significant communicable diseases include, but are not limited to, varicella (chicken pox), measles, mumps, pertussis (whooping cough), and typhoid.

**4. Bloodborne Pathogens**

Infection control awareness will be communicated on a regular basis to residents, staff, and health care providers. Residents exposed to potentially infectious body fluids (e.g., through needle sticks or bites) will be afforded immediate medical assistance, and the incident will be reported as soon as possible to the CMA or designee and documented in the medical file. Standard precautions are to be used at all times when caring for residents.



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Each Center will establish a written plan to address exposure to bloodborne pathogens; the management of hepatitis A, B, and C; and the management of HIV infection, including reporting. The plan should emphasize the need for prompt medical evaluation for exposed persons to facilitate early administration of prophylactic medication and vaccines, as medically appropriate.

**Hepatitis.** A resident may request hepatitis testing at any time while in residence.

**HIV.** A resident may request HIV testing at any time while in residence. Persons who feed, escort, directly supervise, interview, or conduct routine office work with HIV patients are generally not at risk of infection. However, persons regularly exposed to blood may be at risk. Centers will develop a written plan to ensure the highest degree of confidentiality regarding HIV status and medical condition. Staff training must emphasize the need for confidentiality, and procedures must be in place to limit access to health records to only authorized individuals and only when necessary.

The accurate diagnosis and health care management of HIV infection among residents will be promoted. An HIV diagnosis may be made only by a licensed health care provider, based on a medical history, current clinical evaluation of signs and symptoms, and laboratory studies.

**Clinical Evaluation and Management.** Health care personnel will provide all residents diagnosed with HIV/AIDS health care consistent with national recommendations and guidelines disseminated through the U.S. Department of Health and Human Services, the CDC, and the Infectious Diseases Society of America. Medical and pharmacy personnel will ensure that all FDA medications currently approved for the treatment of HIV/AIDS are accessible. Medical and pharmacy personnel will develop and implement distribution procedures to ensure timely and confidential access to medications.

Many of these guidelines are available through the following links:

- <http://aidsinfo.nih.gov/Guidelines/default.aspx>
- <http://www.cdc.gov/hiv/resources/guidelines/index.htm#treatment>
- <http://www.idsociety.org/Content.aspx?id=9088>

Medical and pharmacy personnel will ensure the Center maintains access to adequate supplies of FDA-approved medications for the treatment of HIV/AIDS to ensure newly admitted residents will be able to continue with their treatments without interruption. Upon release, residents currently receiving highly active antiretroviral therapy and other drugs will receive up to a 30-day supply of their medications as medically appropriate.

When current symptoms are suggestive of HIV infection, the following procedures will be implemented:

- Residents with HIV will not be separated from the general population, either pending a test result or after a test report, unless clinical evaluation reveals a medical need for isolation. Isolation of HIV-positive residents is not necessary for public health purposes;
- Following a clinical evaluation, if a resident manifests symptoms requiring treatment



**4.3 Health Care**

beyond the Center's capability, then the health care provider will recommend the resident's transfer to a local hospital or other appropriate facility for further medical testing, final diagnosis, and acute treatment as needed, consistent with local operating procedures;

- Any resident with active TB also will be evaluated for possible HIV infection; and
- New HIV-positive diagnoses must be reported to government bodies according to state and local laws and requirements; the HSA is responsible for ensuring that all applicable legal requirements are met.

Designated health care staff will provide residents with HIV diagnoses information on HIV treatment centers in or near their intended destination following custody. See U.S. HIV service locator at <https://www.hiv.gov/>. Contact IHSC to assist with identifying foreign resources.

The Standard Precautions section of the ICE Family Residential Standard *Environmental Health and Safety* provides more detailed information.

**G. Pharmaceutical Management**

Each Center will have and comply with written policy and procedures for the management of pharmaceuticals, including the following:

- Maintaining a formulary of all prescription and nonprescription medicines stocked or routinely procured from outside sources;
- Identifying a method for promptly approving and obtaining medicines not on the formulary;
- Creating prescription practices, including requirements that medications are prescribed only when clinically indicated, and that prescriptions are reviewed before being renewed;
- Creating a process for procurement, receipt, distribution, storage, dispensing, administering, and disposing medications;
- Securing storage, disposal, and perpetual inventory of all controlled substances (DEA Schedule II-V), syringes, and needles;
- Keeping medication error reports for all dispensing and administration errors;
- Ensuring all staff responsible for administering or having access to pharmaceuticals are trained on medication management before beginning duty;
- Ensuring all pharmaceuticals are stored in a secure area with the following features:
  - A secure perimeter;
  - Access limited to authorized medical staff only;
  - Solid walls from floor to ceiling and a solid ceiling;
  - A solid core entrance door with a high-security lock (with no other access); and
  - A secure medication storage area.

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- Ensuring administration and management are in accordance with state and federal law;
- Ensuring supervision of the pharmacy by a licensed pharmacist(s);
- Ensuring administration of medications is by properly licensed, credentialed, and trained personnel under the supervision of the HSA, CMA, or both; and
- Documenting accountability for administering or distributing medications in a timely manner, and according to licensed provider orders.
- The HSA, CMA, and pharmacist will develop Center-specific Local Operating Procedures (LOP) regarding types of medications which may be issued to residents as Keep On Person (KOP) and those that require directly observed administration. Patient education is essential part of the LOP for KOP medication to be authorized. Such LOP will take into consideration Center design features and housing assignments that may promote a safe environment for medication storage in the general population settings.

**H. Nonprescription Medications**

The Center Administrator and HSA jointly will approve any nonprescription medications that are available to residents outside of health services (e.g., sold in commissary, distributed by staff), to avoid potential liability of inadvertent access by resident minors. The Center Administrator and HSA will also set policy and procedure for such medications, which will be reviewed jointly on an annual basis at a minimum.

**I. Health Care Personnel**

All health care staff must be verifiably licensed, certified, credentialed, and/or registered in compliance with applicable state and federal requirements. Copies of the documents must be maintained onsite and readily available for review. A restricted license does not meet this requirement.

**J. Medical and Mental Health Screening of New Arrivals**

As soon as possible, but no later than 12 hours after arrival, all residents will receive, by an appropriately qualified health care professional, an initial medical, dental, vulnerability, and mental health screening and be asked for information regarding any known acute or emergent medical conditions. Any resident responding in the affirmative will be sent for evaluation to a qualified, licensed health care professional as clinically indicated, but no later than two working days after the initial screening. Residents who appear upon arrival to raise urgent medical or mental health concerns will receive priority in the intake screening process. For intrasystem transfers, a qualified health care professional will review each incoming resident's health record or health summary within 12 hours of arrival, to ensure continuity of care.

Residents with limited English proficiency and/or communication impairments (such as those who are hearing impaired) will be provided interpretation or translation services, auxiliary aids or services, or other assistance as needed for medical care activities. Language assistance may be provided by another health care or Center staff member competent in the resident's primary language or by a professional service, such as a telephone interpretation service. Only in emergency

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situations may another resident be used for interpretation assistance, and then only if the interpreter is proficient and reliable, and, if possible, only with the consent of the resident who is being screened.

The screening will inquire into the following:

- Current health care needs;
- Any past history of serious infectious or communicable illness, and any treatment or symptoms;
- History of physical and mental illness;
- Pain assessment;
- Immunization history;
- Current and past medication;
- Allergies;
- Past surgical procedures;
- Symptoms of active TB or previous TB treatment;
- Dental care history;
- Use of alcohol, tobacco, and other drugs, including an assessment for risk of potential withdrawal;
- Possibility of pregnancy;
- Other relevant health problems identified by the CMA responsible for screening inquiry;
- Observation of behavior, including state of consciousness, mental status, appearance, conduct, tremor, or sweating;
- History of suicide attempts, current suicidal/homicidal ideation or intent, and/or non-suicidal self-injury;
- Observation of body deformities and other physical abnormalities (e.g., marks, rashes, amputations, bruises, or scars);
- Inquire whether a resident self-identifies as transgender, and if so, document their history of transition-related care, if any;
- Past hospitalizations (to include mental health treatment);
- Chronic illness (including, but not limited to, hypertension and diabetes);
- Dietary needs; and
- Any history of physical or sexual victimization or perpetrated sexual abuse, and when the

**4.3 Health Care**

incident occurred.

When there is a clinically significant finding as a result of the initial health screening, the health care professional who performed the screening will initiate an immediate referral and the resident will receive a health assessment as clinically indicated but no later than two working days from the initial screening.

For further information and guidance, see the ICE Family Residential Standard on *Admission and Release*.

Initial screenings will be conducted in settings that respect residents' privacy. Screenings will include observation and interview questions related to the resident's potential suicide risk and mental health. For further information, see the ICE Family Residential Standard on *Significant Self-harm and Suicide Prevention and Intervention*. If, at any time during the screening process, there is an indication of need of, or a request for, mental health services, the HSA must be notified as clinically indicated, but in any event, no later than 24 hours. The CMA, HSA, or other qualified licensed health care provider will ensure a full mental health evaluation, if indicated. Mental health evaluations must be conducted within the timeframes prescribed in this standard.

All Centers will have policies and procedures in place to ensure documentation of the initial health screening and assessment.

The health intake screening will be conducted using the "In-Processing Health Screening" form (IHSC 795A or J) or its equivalent and will be completed prior to the resident's placement in a living/activity area. Upon completion of the In-Processing Health Screening form, Center staff will immediately notify medical staff when one or more positive responses are documented. Medical staff will then assess priority for treatment (e.g., urgent, today, or routine). See "Comprehensive Health Assessment" and "Medical/Psychiatric Alerts and Holds" sections in this standard.

**K. Substance Dependence and Detoxification**

All residents will be evaluated through an initial screening for use of and/or dependence on mood- and mind-altering substances, alcohol, opiates, hypnotics, sedatives, etc. Residents who report the use of such substances will be evaluated for their degree of reliance on and potential for withdrawal from the substance.

The CMA will establish guidelines for evaluation and treatment of new arrivals who require detoxification.

Medical staff will monitor residents experiencing severe or life-threatening intoxication or withdrawal and such residents will be transferred immediately to an emergency department for evaluation.

Once evaluated, the resident will be referred to an appropriate facility qualified to provide treatment and monitoring for withdrawal, or treated onsite if the Center is staffed with qualified personnel and equipment to provide appropriate care.

**L. Privacy and Chaperones****1. Medical Privacy**

**4.3 Health Care**

Medical and mental health interviews, screenings, appraisals, examinations, procedures, and administration of medication will be conducted in settings that respect residents' privacy.

**2. Same-Gender Providers and Chaperones**

A resident's request to see a health care provider of the same gender should be considered; when not feasible, a same-gender chaperone will be provided. When care is provided by a health care provider of the opposite gender, resident will be offered a same-gender chaperone, and provided the chaperone whenever the offer is accepted. A same-gender chaperone will be provided whenever a medical encounter involves a physical examination of sensitive body parts, to include breast, genital, or rectal examinations, by a provider of the opposite gender. Only medical personnel may serve as chaperones during medical encounters and examinations.

**M. Comprehensive Health Assessment**

Each Center's health care provider will conduct a comprehensive health assessment, including a physical examination and mental health screening, on each adult resident within 14 calendar days of arrival and each minor within 48 hours of arrival, excluding weekends and holidays, unless more immediate attention is required due to an acute or identifiable chronic condition. Physical examinations will be performed by a physician, physician assistant, nurse practitioner, registered nurse (with documented training provided by a physician), or other health care practitioner as permitted by law. The CMA will implement a process to ensure health needs are prioritized.

During the initial intake screening, health care staff identifies and addresses all reported abnormal findings, abnormal vital signs, acute or chronic conditions, and other urgent/emergent conditions. For all residents with acute or chronic health care needs, the intake staff notifies a physician or an advanced practice provider who performs a comprehensive health assessment and establishes a plan of care within two working days or sooner if the clinical situation is more critical. Juveniles receive initial and periodic health assessments as soon as possible, but no later than 48 hours, excluding weekends and holidays, after admission to the Center.

If documentation exists of a comprehensive health assessment within the previous 90 days, then the qualified, licensed health care provider may determine upon review that a new appraisal is not required.

All positive findings (i.e., history and physical, screening, and laboratory) will be reviewed by the treating clinician.

Residents diagnosed with a communicable disease will be isolated according to guidance in this ICE Family Residential Standard and national standards of health care practice and procedures.

**N. Medical/Psychiatric Alerts and Holds**

When a resident has a serious medical or mental health condition or otherwise requires special or close health care, medical staff will complete a "Medical/Psychiatric Alert" form (IHSC-834) or its equivalent, and file the form in the resident's medical record. Those residents who are currently on a medical hold status must be evaluated and cleared by health care staff prior to transfer or removal. The Center Administrator will receive notice of all medical/psychiatric alerts or holds, and will be responsible for notifying ICE/ERO of any medical alerts or holds placed on a resident who is

to be transferred.

Potential health conditions meriting the completion of a “Medical/Psychiatric Alert” form or its equivalent may include, but are not limited to:

- Medical conditions requiring ongoing therapy, such as:
  - Active TB;
  - Infectious diseases; and
  - Chronic conditions.
- Mental health conditions requiring ongoing therapy;
- Ongoing physical therapy; and
- Pregnancy.

## **O. Mental Health Program**

### **1. Mental Health Services Required**

Each Center will have an in-house or contractual mental health program, approved by the appropriate medical authority, that provides:

- Intake screening (on form IHSC 794 or its equivalent) for mental health concerns;
- Referral as needed for evaluation, diagnosis, treatment, and monitoring of mental illness by a competent mental health professional;
- Crisis intervention and management of acute mental health episodes;
- At least one individual counseling session per week for each minor resident, conducted by trained social work staff with the specific objectives of reviewing the minor’s progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each minor.
- Transfer to licensed mental health facilities for residents whose mental health needs exceed the capabilities of the Center; and
- A suicide prevention program, which includes the tracking of referrals to medical/mental health and the outcomes of those referrals.

### **2. Mental Health Provider**

The term “mental health provider” includes psychiatrists, physicians, psychologists, clinical social workers, psychiatric mental health nurse practitioners, and other appropriately licensed independent mental health practitioners.

### **3. Mental Health Evaluation**

Based on intake screening, the comprehensive health assessment, medical documentation, or subsequent observations by Center staff or health care personnel, any resident referred for mental

**4.3 Health Care**

health treatment will receive an evaluation by a qualified health care provider no later than 72 hours after the referral, or sooner if necessary. If the practitioner is not a mental health provider and further referral is necessary, then the resident will be evaluated by a mental health provider within the next business day.

Such evaluation and screenings will include:

- Reason for referral;
- History of any mental health treatment or evaluation;
- History of illicit drug/alcohol use or abuse or treatment for such;
- History of suicide attempts;
- Current suicidal/homicidal ideation or intent;
- Current use of any medication;
- Estimate of current intellectual function;
- Mental health screening, to include prior history of physical, sexual, or emotional abuse;
- Impact of any pertinent physical condition, such as head trauma or seizures; and
- Recommended actions for any appropriate treatment, including, but not limited to, the following:
  - Remain in general population with mental health treatment and accommodations as indicated;
  - Short-term medical observation housing;
  - Transfer to a Center with the capacity to meet the patient's needs; or
  - Community hospitalization; and
- Recommending and/or implementing a treatment plan, including recommendations concerning transfer, housing, voluntary work, and other program participation.

**4. Referrals and Treatment**

Any resident referred for mental health treatment will receive an evaluation by a qualified, licensed health care provider no later than 72 hours after the referral, or sooner if necessary. A qualified, licensed health care provider may be a registered nurse, advanced practice provider (nurse practitioner/physician assistant), physician, or mental health provider. If the practitioner is not a mental health provider and further referral is necessary, the resident will be evaluated by a mental health provider within the next business day.

The provider will develop an overall treatment/management plan.

If the resident's mental illness or developmental or intellectual disability needs exceed the treatment capability of the Center, then a referral to an outside mental health facility may be



**4.3 Health Care**

initiated, after securing parental consent and taking into account the need to maintain family unity.

Any resident prescribed psychiatric medications must be regularly evaluated by a duly-licensed and appropriate medical professional as clinically indicated, and at least once a month, to best treat their condition.

**5. Medical Observation**

The CMA may authorize temporary medical observation for a resident who is at high risk for violent behavior because of a mental health condition, pending resolution of the situation or transfer to a more suitable facility. Informed consent will be obtained from a minor resident's parent/guardian before any external transfer. The CMA will be responsible for the daily reassessment of the need for continued medical observation to ensure the health and safety of the resident.

Medical observation will not be used as a punitive measure.

**6. Involuntary Administration of Psychotropic Medication**

Involuntary administration of psychotropic medications to juveniles will not occur at an FRC, therefore, the following procedures apply only to adult residents. Involuntary administration of psychotropic medication to adult residents will comply with established guidelines and applicable laws, and will be performed only under the care of a physician at a hospital or a medical facility appropriate to the needs of the resident and pursuant to the specific, written and detailed authorization of a physician. Absent a declared medical emergency, before psychotropic medication is involuntarily administered, the HSA must contact ICE/ERO, including the FOD and the JFRMU Chief, who will then contact the ICE Office of the Principal Legal Advisor to facilitate a request for a court order to involuntarily medicate the resident.

Prior to involuntarily administering psychotropic medication, absent a declared medical emergency, the authorizing physician will act in accordance with state law and will:

- Review the medical record of the resident and conduct a medical examination;
- Specify the reasons for and duration of therapy, and whether the resident has been asked if he/she would consent to such medication;
- Specify the medication to be administered, the dosage, and the possible side effects of the medication;
- Document that less restrictive intervention options have been exercised without success;
- Detail how the medication is to be administered;
- Monitor the resident for adverse reactions and side effects; and
- Prepare treatment plans for less restrictive alternatives as soon as possible.

See the section on Informed Consent and Involuntary Treatment in this standard for more information.

## **P. Referrals for Sexual Abuse Victims or Abusers**

If any security or health intake screening or assessment indicates that a resident has experienced prior sexual victimization or perpetrated sexual abuse, then staff will, as appropriate, ensure that the resident is referred immediately to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate.

When a referral for medical follow-up is initiated, the resident will receive a health evaluation, as clinically indicated, no later than two working days from the date of assessment. When a referral for mental health follow-up is initiated, the resident will receive a mental health evaluation as medically indicated but no later than 72 hours after the referral.

For the purposes of this section, a “qualified medical practitioner” or “qualified mental health practitioner” means a health or mental health professional, respectively, who in addition to being qualified to evaluate and care for patients within the scope of his/her professional practice, has successfully completed specialized training for treating sexual abuse victims.

## **Q. Notice of Residents with Serious Illnesses and Other Specified Conditions**

The Center Administrator and CMA will ensure that the FOD is notified as soon as practicable of any resident identified as having a serious physical or mental illness or to be pregnant, or have medical complications related to advanced age, but no later than 72 hours after such determination. The written notification will become part of the resident’s health record file. The FOD also must be notified of any resident who has been hospitalized while in ICE custody.

### **1. Serious Physical Illness**

For purposes of this subsection only, the following non-exhaustive categories of medical conditions may be considered to constitute serious physical illness:

- any chronic deteriorating condition requiring multiple medications, to include progressive immune-suppressive conditions;
- any condition that requires an imminent medical procedure or other medical intervention to prevent deterioration;
- any terminal illness;
- active cancer, including but not limited to individuals undergoing chemotherapy;
- Acquired Immuno-Deficiency Syndrome (AIDS) or diagnosed HIV-positive conditions requiring medication;
- multi-drug-resistant (MDR) or extensively drug-resistant (XDR) tuberculosis disease;
- any condition that requires dialysis;
- any condition that requires tube feedings, mechanical ventilation, an implanted cardiac device, or an oxygen tank, or
- any other physical illness determined to be serious by Center medical personnel or by IHSC.

**4.3 Health Care****2. Serious Mental Illness**

For the purposes of this section, the following non-exhaustive categories of conditions should be considered to constitute a serious mental illness: conditions that a qualified medical provider has determined to meet the criteria for a “serious mental disorder or condition” pursuant to applicable ICE policies, including:

- a mental disorder that is causing serious limitations in communication, memory, or general mental and/or intellectual functioning (e.g., communicating, conducting activities of daily life, social skills); or a severe medical condition(s) (e.g., traumatic brain injury or dementia) that is significantly impairing mental function; or
- one or more of the following active psychiatric symptoms and/or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, marked anxiety or impulsivity.
- significant symptoms of one of the following:
  - Psychosis or Psychotic Disorder;
  - Bipolar Disorder;
  - Schizophrenia or Schizoaffective Disorder;
  - Major Depressive Disorder with Psychotic Features;
  - Dementia and/or a Neurocognitive Disorder; or
  - Intellectual Development Disorder (mild, moderate, severe, or profound).
- any ongoing or recurrent conditions that had a recent or prolonged hospitalization, typically for greater than 14 days, or a recent and prolonged stay in a medical clinic;
- any condition that would preclude the resident from living in a non-restrictive, group housing setting (like an FRC), or
- any other mental illness determined to be serious by the treating mental health professional.

**3. Pregnancy**

The notification requirement in this section applies to all women who have been medically certified as pregnant, regardless of the stage of the pregnancy.

**R. Annual Health Examinations**

Any resident in ICE custody for more than one year continuously will receive health examinations annually. Such examinations may occur more frequently for certain individuals, depending on their medical history and/or health conditions. Residents will have access to age- and gender-appropriate exams annually, including re-screening for TB.

**4.3 Health Care****S. Dental Treatment**

An initial dental (oral) screening exam will be performed within 14 calendar days of an adult resident's arrival, and within 7 calendar days of arrival for minors. The initial dental screening may be performed by a dentist or by physician, physician assistant, nurse practitioner, or registered nurse, if properly trained by a dentist.

An oral examination is to be performed by a licensed dentist within one year for an adult and within 60 days for a juvenile.

Emergency dental treatment will be provided for immediate relief of pain, trauma, and acute oral infection.

Routine dental care, not limited to extractions, is provided to residents during the first six months of residency at an FRC according to a treatment plan based on a system of established priorities for care when, in the dentist's judgment, a resident's health would otherwise be adversely affected. Routine preventative care appointments, including an oral exam, may recur every six months for those who remain in residence. Routine care may include amalgam and composite restorations, prophylaxis, root canals, extractions, x-rays, the repair and adjustment of prosthetic appliances, and other procedures required to maintain the resident's health.

Dental exams and treatment will be performed only by licensed dental personnel.

**T. Sick Call**

Each Center will have a sick call procedure that allows residents the unrestricted opportunity to freely request health care services (including mental health and dental services) provided by a physician or other qualified health care staff in a clinical setting. This procedure will include:

- Clearly written policies and procedures;
- Sick call process communicated in writing and verbally to residents during their orientation;
- Regularly scheduled sick call times established and communicated to residents; and
- In Centers using sick call requests, an established procedure will be in place to ensure that all sick call requests are received and triaged by appropriate health care personnel within 24 hours after a resident submits the request, or no later than the following morning. All written sick call requests will be date- and time-stamped and filed in the resident's medical record. Health care personnel will review the request slips and determine when the resident will be seen based on acuity of the problem. In an urgent situation, Center staff will notify health care personnel immediately.

Sick call will be held seven days a week.

If the procedure requires a written request slip, then the slip will be in English and the languages most widely spoken among the residents within the Center.

LEP residents and residents who are hearing or visually impaired will be provided interpretation/translation services or other assistance as needed to complete a request slip.

**4.3 Health Care**

Request slips will be completed, dated, and signed by adult residents on behalf of themselves or their minor children.

All Centers will maintain all sick call requests in the medical record and in a central log/location at the Center.

**U. Emergency Medical Services and First Aid**

Each Center will have a written emergency services plan for delivery of 24-hour emergency health care. This plan will be prepared in consultation with the Center's CMA or the HSA, and must include the following:

- Daily assignment of in-house emergency response team designated per shift;
- An on-call physician, dentist, and mental health professional, or designee, who are available 24 hours per day;
- A list of telephone numbers for local ambulances and hospital services available to all staff;
- An automatic external defibrillator (AED) maintained for use at each Center and accessible to staff;
- Cardiopulmonary resuscitation (CPR), AED, and emergency first aid training annually for all health care and non-health care staff;
- Annual training to enable health care personnel and non-health care staff to respond to health-related situations within four minutes; and
- Procedures that ensure the immediate transfer of residents for emergency health care.

The HSA ensures that health care staff have training and competency in implementing the Center's emergency health care plan appropriate for each staff member's scope of practice or position. The Center Administrator ensures that non-health care staff have appropriate training and competency in implementing the Center's emergency plan appropriate for each staff member's position.

Training and competency assessments will include the following areas:

- Recognizing signs of potential health emergencies and the required responses;
- Administering first aid, AED and CPR;
- Obtaining emergency medical assistance through the Center plan and its required procedures;
- Recognizing signs and symptoms of mental illness and suicide risk; and
- The Center's established plan and procedures for providing emergency health care including, when required, the safe and secure transfer of residents for appropriate hospital or other health care services, including by ambulance when indicated. The plan must provide for expedited entrance to and exit from the Center.

When a non-health care employee has reason to suspect that emergency care is required, he/she

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will immediately notify an on-call medical provider, who will make the determination.

Health care and safety equipment will be available and maintained, and staff will be trained in proper use of the equipment.

In each Center, the Center Administrator, in consultation with the designee for environmental health and safety, will determine the contents, number, location(s), and use protocols for first aid kits, as well as the procedures for monthly inspections thereof.

Victims of sexual abuse will have timely access to emergency medical treatment and crisis intervention services in accordance with the ICE Family Residential Standard on *Sexual Abuse and Assault Prevention and Intervention*.

**V. Delivery of Medication**

Medication (including over the counter medications) will be distributed in accordance with specific instructions and procedures established by the HSA in consultation with the CMA. Written or electronic records of all prescribed medication given to or refused by residents will be maintained by health care staff.

If prescribed medication must be delivered at a time when medical staff is not on duty, then the medication may be distributed by other staff, where it is permitted by state law to do so, who have received proper training by the HSA or designee.

The Center will maintain documentation of the training given any staff required to distribute medication, and the staff will have available for reference the training syllabus or other guide or protocol provided by the HSA or designee.

Residents may not deliver or administer medications to other residents except individuals in their own family or under their guardianship as described in local policy.

All prescribed medications and medically necessary treatments will be provided to residents on schedule and without interruption, absent exigent circumstances.

Residents who arrive at a Center with prescribed medications, or who report being on such medications, will be evaluated by a qualified health care professional as soon as possible, but not later than 24 hours after arrival, and provisions will be made to secure medically necessary medications.

Residents will not be charged for any health care services to include pharmaceuticals dispensed by medical personnel.

**W. Health Education and Wellness Information**

Qualified health care personnel will provide residents health education and wellness information on topics including, but not limited to, the following:

- Safe medication use;
- Personal and hand hygiene and dental care;
- Prevention of communicable diseases;

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- Smoking cessation;
- Self-care for chronic conditions; and
- Benefits of physical fitness.

**X. Special Needs and Close Medical Supervision**

Consistent with the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation* and the IHSC Covered Services Package, residents will be provided medical prosthetic devices or other impairment aids, such as eyeglasses, hearing aids, or wheelchairs.

When a resident requires close health care supervision, including chronic and convalescent care, the appropriate qualified licensed health care provider, in consultation with the patient, and with periodic review, will develop and approve a written treatment plan, including access to health care and other care and supervision personnel. Likewise, staff responsible for matters such as housing and program assignments and behavior modification measures will consult with the responsible qualified licensed health care provider or HSA.

Residents must be seen by a qualified licensed health care provider at least every 90 days to assess the status of their chronic condition(s) and review the plan of care.

Exercise areas will be available to meet exercise and physical therapy requirements of individual resident treatment plans.

Transgender residents who were already receiving hormone therapy when taken into ICE custody will have continued access. All transgender residents will have access to mental health care, and other transgender-related health care and medication based on medical need. Treatment will follow accepted guidelines regarding medically necessary transition-related care.

For special needs related to female residents, see the ICE Family Residential Standard on *Health Care (Females)*.

**Y. Restraints**

Restraints for medical or mental health purposes may be authorized only by the Center's CMA or designee, after determining that less restrictive measures are not appropriate. In the absence of the CMA authorization, qualified health care personnel may apply restraints only upon declaring a medical emergency. Within one hour of initiation of emergency restraints or seclusion, qualified medical staff will notify and obtain an order from the CMA or designee. All restraint applications will be in accordance with the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints* and state law, including its provisions for the treatment of minor residents and the necessity of their parents'/guardians' informed consent.

The Center will have written procedures that specify:

- the conditions under which restraints may be applied;
- the types of restraints to be used;



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- the proper use, application and medical monitoring of restraints;
- obtaining parental consent if the resident is a minor;
- requirements for documentation, including efforts to use less restrictive alternatives; and
- after-incident review.

The use of restraints requires documented approval and guidance from the CMA. Record-keeping and reporting requirements regarding the medical approval to use restraints will be consistent with other provisions within these standards, including documentation in the resident's A-file, residential file, and medical file.

**Z. Continuity of Care**

The Center HSA must ensure that a plan is developed that provides for continuity of health care in the event of a change in custody or residential placement or status.

The resident's medical needs will be taken into account prior to any transfer of the resident to another Center or other ICE facility. Alternatives to transfer will be considered, taking into account the disruption that a transfer will cause to a resident receiving health care. Upon transfer to another Center, the medical provider will prepare and provide the resident a medical transfer summary (described in the ICE Family Residential Standard on *Resident Transfers*). In addition, the medical provider will ensure that at least a 7-day (or, in the case of TB medications, 15-day, and in the case of HIV/AIDS medications, 30-day) supply of medication will accompany the resident as ordered by the prescribing authority.

Upon removal or release from ICE custody, the resident will receive up to a 30-day supply of medication, as ordered by the prescribing authority, and a detailed health care summary. If a resident is on prescribed narcotics, the CMA will make a determination regarding continuation, based on assessment of the resident. The HSA must ensure that a continuity of treatment care plan is developed, and a written copy is provided to the resident prior to release or removal.

**AA. Informed Consent and Involuntary Treatment**

Involuntary treatment is a decision made only by medical staff under strict legal restrictions. When a resident (i.e., an adult or a minor without parental consent) refuses health care treatment, and the licensed health care provider determines that a health care emergency exists, the physician may authorize involuntary medical treatment. Prior to any contemplated action involving non-emergent involuntary medical treatment, the ICE Office of the Principal Legal Advisor will be consulted.

NOTE: As described in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*, Centers are expected to adhere to both the FRS and any state licensing requirements; when there is a conflict, state licensing requirements will prevail. Seek ICE/ERO/JFRMU assistance as needed.

**1. Informed Consent**

Informed consent standards of the jurisdiction will be observed. Either consent forms will be

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provided in a language the resident reads and understands, or professional interpretation assistance will be provided as described in the section on Translation and Language Access for Residents with Limited English Proficiency. Use of professional interpretation services will be documented on the form.

Upon admission at the Center, documented informed consent will be obtained from adult residents, on behalf of themselves and their minor child(ren), for the provision of health care services (e.g., general exams, sick call, and immunizations).

All examinations, treatments, and procedures are governed by informed consent practices applicable in the jurisdiction.

A separate documented informed consent is required for invasive procedures, including surgeries, invasive diagnostic tests, and dental extractions.

Prior to the administration of psychotropic medications, a separate documented informed consent, which includes a description of the medication's purpose, possible benefits, risks of declining treatment, and side effects, will be obtained. Involuntary administration of psychotropic medications to juveniles will not occur at an FRC.

If an adult resident refuses consent to treatment on behalf of him/herself or his/her minor child(ren) and the CMA or designee determines that treatment is necessary, then ICE/ERO and the ICE Office of the Principal Legal Advisor will be consulted in determining whether involuntary treatment will be pursued.

If the resident refuses to consent to treatment, then health care staff will make reasonable efforts to explain to the resident the necessity for and propriety of the recommended treatment. Health care staff will ensure that the resident's questions regarding the treatment are answered by appropriate medical personnel.

Health care staff will explain the health risks if treatment is declined and will document their treatment efforts and refusal of treatment in the resident's health care record. Residents will be asked to sign a refusal form to document their refusal of care and their understanding of the risks of the refusal. Interpretation/translation services will be used as needed to meaningfully convey the content of the refusal form, and the use of such services will be documented on the form itself.

The CMA and Center Administrator will look into refusals of treatment to ensure that such refusals are not the result of miscommunication or misunderstanding.

Centers should make efforts to involve trusted individuals such as clergy or family members should a resident refuse treatment.

When an adult resident's refusal of examination or treatment on behalf of him/herself or his/her minor child(ren) poses a risk to the general population, staff, or visitors, the CMA may determine it medically necessary to remove that resident from the general population until the situation can be resolved. Health observation will only be for health reasons that are documented in the health care record and may not be used for punitive purposes. Such placement will only occur after a determination by a licensed mental health provider that the placement will not adversely affect the resident's mental health. Center staff will immediately notify the FOD and JFRMU Chief of such

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placement.

In the event of a hunger strike, see the ICE Family Residential Standard on *Hunger Strikes*.

The ICE Family Residential Standard on *Terminal Illness, Advance Directives, and Death* provides details regarding living wills and advance directives, organ donations, and do not resuscitate (DNR) orders.

**BB. Health Care Records****1. Health Record File**

The HSA will maintain a complete health record on each resident that is:

- Organized uniformly in accordance with appropriate accrediting body standards;
- Available to all practitioners and used by them for health care documentation; and
- Properly maintained and safeguarded in a securely locked area within the medical unit.

**2. Confidentiality and Release of Medical Records**

All health care providers and staff will protect the privacy of residents' health information in accordance with established guidelines and applicable laws, regulations, and agency policy. These protections apply not only to records maintained on paper but also to electronic records when they are used. Staff training must emphasize the need for confidentiality and procedures must be in place to limit access to health records to only authorized individuals and only when necessary.

Information about a resident's health status and a resident's health record is confidential, and the active medical record will be maintained separately from other records and be accessible in accordance with applicable laws and regulations.

The HSA will provide the Center Administrator and designated staff information that is necessary as follows:

- To preserve the health and safety of the resident, other residents, staff, or any other person;
- For administrative purposes and decisions such as housing, voluntary work assignments, security, and transport; or
- For management purposes such as audits and inspections.

Specific restrictions govern the release of medical information or records. Adult residents who indicate they wish to obtain copies of their or their family members' medical records will be provided with the appropriate request form (which may be an IHSC Form I-813 or its equivalent). ICE/ERO, or the Center Administrator, will provide LEP residents and residents who are hearing or visually impaired with interpretation or translation services or other assistance as needed to make the written request, and will assist in transmitting the request to the Center HSA.

Upon his/her request, while in the Center, an adult resident or his/her designated representative will receive information from the resident's health records or those of his/her family members. Copies of health records will be released by the HSA directly to an adult resident or his/her

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designee, at no cost to the resident, within a reasonable timeframe after receipt by the HSA of a written request and/or authorization from the resident.

In absence of a Form I-813 or its equivalent, a written request may serve as authorization for the release of health information, as long as it includes the following information:

- Name of the individual or institution to receive the information;
- Resident's full name, date and place of birth or other verification of identity, and appropriate identifier (SSN, A-number, etc.);
- Description of the records and information to be released; and
- Resident's signature and date.

Written authorization for health care records must be from the resident, or in the case of a child, the child's parent/guardian. Following the release of health information, the written request and/or authorization will be retained in the health record.

Residents are to be informed that if they are removed or released from custody prior to laboratory results being evaluated, then the results will be made available by contacting the Center and providing consent for the release of information.

**3. Inactive Health Record Files**

All inactive health care records will be retained as permanent records in compliance with locally established procedures and the legal requirements of the jurisdiction.

**4. Transfer and Release of Residents**

ICE/ERO and the HSA will be notified when residents are to be transferred or released. Residents will be transferred, released, or removed with proper medication to ensure continuity of care throughout the transfer and subsequent intake process, release, or removal (see the section above on Continuity of Care). Those residents who currently are placed in a medical hold status must be evaluated and cleared by a physician, nurse practitioner, or physician assistant prior to transfer or removal. In addition, the CMA or designee must inform the Center Administrator and ICE/ERO in writing if the resident's medical or psychiatric condition requires a medical escort during removal or transfer.

**Notification of Medical/Psychiatric Alerts or Holds.** Upon receiving notification that a resident is to be transferred, appropriate medical staff at the sending Center will notify the Center Administrator of any medical/psychiatric alerts or holds that have been assigned to the resident, as reflected in the resident's health records. The Center Administrator will be responsible for providing notice to ICE/ERO of any medical alerts or holds placed on the resident that is to be transferred.

**Notification of Transfers, Releases, and Removals.** The HSA will be given 24 hours' advance notice by ICE/ERO prior to the release, transfer, or removal of a resident, so that health care staff may determine and provide for any health care needs associated with the transfer, release, or removal.

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**Transfer of Health Records.** When a resident is transferred to another Center or ICE detention facility, a health care transfer summary described in the ICE Family Residential Standard on *Resident Transfers* must accompany each resident during transfer. Upon request of the receiving Center or ICE detention facility, the sending Center will transmit a copy of the full health care record within 5 business days, or sooner if determined by the receiving Center or ICE detention facility to be a medically urgent matter.

Upon removal or release from ICE custody, the resident will be provided medication, referrals to community-based providers as medically appropriate, and a detailed health care summary. This summary should include instructions that the resident can understand and a health history that would be meaningful to future health care providers. The summary will include, at a minimum, the following items:

- Patient identification;
- Child immunization records, which will be provided to the parent or guardian upon release (other requirements for the transfer of records are contained in the ICE Family Residential Standard on *Resident Transfers*);
- TB screening results (including results date) and current TB status if TB disease is suspected or confirmed;
- Current mental, dental, and physical health status, including all significant health issues, and highlighting any potential unstable issues or conditions which require urgent follow-up;
- Results of pregnancy tests, when applicable;
- Current medications, with instructions for dose, frequency, etc., with specific instructions for medications that must be administered en route;
- Any past hospitalizations or major surgical procedures;
- Recent test results, as appropriate;
- Known allergies;
- Any pending medical or mental health evaluations, tests, procedures, or treatments for a serious health condition scheduled for the resident at the sending Center. In the case of patients with communicable disease and/or other serious medical needs, residents being released from ICE custody are given a list of community resources, at a minimum;
- Copies of any relevant documents as appropriate;
- Printed instructions on how to obtain the complete health record; and
- The name and contact information of the transferring health official.

IHSC Form 839 or its equivalent may be used by Centers to ensure compliance with these standards.

## **CC. Terminal Illness or Death of a Resident**

Procedures to be followed in the event of a resident's terminal illness or death are in the ICE Family Residential Standard on *Terminal Illness, Advance Directives, and Death*. The standard also addresses resident organ donations.

## **DD. Medical Experimentation**

Residents will not participate in medical, pharmaceutical, or cosmetic research while under the care of ICE.

This stipulation does not preclude the use of approved investigational new drugs or clinical trials that may be warranted for a specific resident's diagnosis or treatment when recommended and approved by the CMA. Such measures require documented informed consent and notification to IHSC.

## **EE. Administration of the Health Department**

### **1. Quarterly Administrative Meetings**

The Center Administrator, ICE/ERO, and the HSA will meet at least quarterly and include other Center and medical staff as appropriate. The meeting agenda will include, at minimum, the following:

- An account of the effectiveness of the Center's health care program;
- Discussions of health environment factors that may need improvement;
- Review and discussion of communicable disease and infection control activities;
- Changes effected since the previous meetings; and
- Recommended corrective actions, as necessary.

Minutes of each meeting will be recorded and kept on file.

### **2. Health Care Internal Review and Quality Assurance**

The HSA will implement a system of internal review and quality assurance. The system will include:

- Participation in a multidisciplinary quality improvement committee;
- Collection, trending, and analysis of data along with planning, interventions, and reassessments;
- Evaluation of defined data;
- Analysis of the need for ongoing education and training; and
- Onsite monitoring of health service outcomes on a regular basis through the following measures:
  - Chart reviews by the responsible physician or his/her designee, including investigation of complaints and quality of health records;

**4.3 Health Care**

- Review of practices for prescribing and administering medication;
- Systematic investigation of complaints and grievances;
- Monitoring of corrective action plans;
- Review of all deaths, suicide attempts, and illness outbreaks;
- Development and implementation of corrective-action plans to address and resolve identified problems and concerns;
- Reevaluation of problems or concerns to determine whether the corrective measures have achieved and sustained the desired results;
- Incorporation of findings of internal review activities into the organization's educational and training activities;
- Maintenance of appropriate records of internal review activities; and
- Confirmation that records of internal review activities comply with legal requirements on confidentiality of records.

**3. Peer Review**

The HSA will implement an intra-organizational, external peer review program for all independently licensed medical professionals. Reviews will be conducted at least annually.

**FF. Examinations by Independent Health Care Providers and Experts**

On occasion, medical and/or mental health examinations by a practitioner or expert not associated with ICE or the Center may provide a resident with information useful in administrative proceedings.

If a resident seeks an independent medical or mental health examination, then the resident or his/her legal representative will submit to the FOD a written request that details the reasons for such an examination. Ordinarily, the FOD will approve the request for independent examination, as long as such examination will not present an unreasonable security risk. Requests for independent examinations will be responded to as quickly as practicable. If a request is denied, then the FOD will advise the requester in writing of the rationale.

Neither ICE/ERO nor the Center will assume any costs of the examination, which will be at the resident's expense. The Center will provide a location for the examination but no health care equipment or supplies and the examination must be arranged and conducted in a manner consistent with Center safety and security.

**GG. Tele-Health Systems**

If the Center elects to utilize tele-health services, the Center will provide appropriate technology and adequate space for the use of services of the ICE Tele-Health Systems, including tele-radiology, tele-psychiatry, and tele-medicine, as appropriate.



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The cost of the equipment, equipment maintenance, staff training, and credentialing (as outlined in the contract), arrangements for X-ray interpretation and administration by a credentialed radiologist, and data transmission to and from the Center will be provided by the Center and charged directly to ICE.

The Center Administrator will coordinate as appropriate to ensure adequate space is provided for the equipment, connectivity is available, and electrical services are installed.

Immediate 24-hour access, 7 days a week, will be granted to equipment for service and maintenance by technicians.

A qualified tele-health coordinator will be appointed and available for training. Qualified, licensed, and credentialed health care staff will be available to provide tele-health services as guided by state and federal requirements and restrictions.

## **Special Provisions for Health Care of Children**

### **A. Health Care of Children (Infant–11 years)**

Each minor, upon arrival at the Center, will be enrolled in a Well Baby or Well Child Clinic. The health assessment and periodic well-child checks will follow the same format for each visit. These assessments will be documented on the “IHSC Pediatric Physical Assessment” form or its equivalent. These assessments will begin with the initial visit, then will inquire as to developmental milestones and evaluate current developmental milestone status at regular intervals as follows:

- 2–4 weeks of age;
- 2 months old;
- 4 months old;
- 6 months old;
- 9 months old;
- 12 months old;
- 15 months old;
- 18 months old;
- 2 years old;
- 2.5 years old; and
- Annually from 3–10 years of age.

At 11 years of age, the health assessment will be documented on the adult health assessment form. This schedule will be updated based on the recommendations of the American Academy of Pediatrics.

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The format for the exams will be the same at each age level, but will place emphasis on the differences for each age group, and will include the following:

- Developmental Tasks:
  - Physical;
  - Behavioral; and
  - Mental.
- Diet and Nutrition:
  - Adequate; and
  - Appropriate for age/development.
- Immunizations:
  - Up to date; and
  - Documentation.
- Subjective Data—will include previous medical history, any current health care problems, medications, and allergies; and
- Objective Data:
  - Vital signs, including blood pressure, temperature, pulse, respirations, height and weight. In children up to 23 months of age, this will also include head circumference; and
  - Physical exam, head to toe, including dental health.

Assessment will include a discussion of findings with the parent or guardian.

Plan will include timing of follow-up, medications, and laboratory tests (if indicated), referral to next level of care (if indicated), and next exam.

Child and parent education will include child development and how to deal with changes in a residential setting; dental hygiene; injury prevention; nutrition; use of any medications; follow-up; and sick call procedures.

**B. Health Care of Adolescents (12–18 years)**

In addition to the above examination process, the adolescent exam will include a special emphasis on preventive services to reduce serious morbidity and premature mortality. The categories included in preventive services screening and counseling will include:

- Screening for risk factors for injury, chronic illness, and need for immunizations;
- Counseling about the following to reduce health risks:

**4.3 Health Care**

- Cardiovascular diseases;
  - Smoking cessation;
  - Obesity/nutrition;
  - Hypertension; and
  - Hyperlipidemia.
- Counseling regarding health risk behaviors:
    - Alcohol and drug use; and
    - Sexually transmitted infections (age-appropriate).
  - Immunizations;
  - General health guidance and recommendation for frequency of health visits; and
  - Dental health.

Guidance for parents of adolescents will include but not be limited to:

- Appropriate parental decisions;
- Adapting parental practices to meet changing needs of the child and the family; and
- Health guidance throughout the child-rearing spectrum.

## References

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Environmental Health and Safety, particularly in regard to storing, inventorying, and handling needles and other sharp instruments; standard precautions to prevent contact with blood and other body fluids; sanitation and cleaning to prevent and control infectious diseases; and disposing of hazardous and infectious waste
- ICE Family Residential Standard on Hunger Strikes
- ICE Family Residential Standard on Health Care (Females)
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Disability Identification, Assessment, and Accommodation
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Resident Transfers

**4.3 Health Care**

- ICE Family Residential Standard on Sexual Abuse and Assault Prevention and Intervention
- ICE Family Residential Standard on Significant Self-harm and Suicide Prevention and Intervention
- ICE Family Residential Standard on Terminal Illness, Advance Directives, and Death
- ICE Family Residential Standard on Use of Physical Control Measures and Restraints
- ACR-SPR Practice Guideline for the Performance of Chest Radiography and ACR-SPR Practice Guideline for the Performance of Portable Chest Radiography
- American Public Health Association Standards for Health Services in Correctional Institutions, Health Services for Women
- Centers for Disease Control and Prevention website, [www.cdc.gov](http://www.cdc.gov) (for the most current guidelines and recommendations on TB case management and control, HIV management, health care acquired infections, infection control, influenza management, respiratory protection, infectious diseases of public health significance, emerging infectious diseases, and correctional health)
- Exec. Order 13166
- ICE Health Service Corps (IHSC) Policies and Procedures Manual
- IHSC Directive 03-10 Intake Screenings and Intake Interviews (4-4. 4-5)
- Infectious Diseases Society of America, <http://www.idsociety.org/Content.aspx?id=9088> (for the most current infectious diseases practice guidelines prepared or endorsed by the Infectious Diseases Society of America)
- National Commission on Correctional Health Care, Standards for Health Services in Jails (2008): JG-06, JG-07, JG-08, JG-09
- National Commission on Correctional Health Care, Standards for Health Services in Juvenile Detention and Confinement Facilities (2011): Y-E-04
- Pediatrics: Targeted Testing and Treatment for TB in Children and Adolescents
- Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014), codified at 6 C.F.R. part 115 *et seq.*
- United States Department of Health and Human Services, HIV Clinical Guidelines Portal, <http://aidsinfo.nih.gov/Guidelines/default.aspx> (for the most current national guidelines on HIV Management)
- [www.flu.gov](http://www.flu.gov)
- [www.aids.gov](http://www.aids.gov)

## 4.4 Health Care (Females)

### Introduction

This Family Residential Standard ensures that women and girls in U.S. Immigration Customs and Enforcement (ICE) custody have access to appropriate and necessary medical and mental health care. This standard details expected outcomes and practices that are applicable specifically to women and girls and are to be read in conjunction with the ICE Family Residential Standard on *Health Care*.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes and the ICE Family Residential Standard on Disability Identification, Assessment, and Accommodation. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this Standard are as follows (specific requirements are defined in Expected Practices):

1. Women and girls will be offered routine, age-appropriate gynecological and obstetrical health care as indicated, consistent with recognized community guidelines for female health services.
2. The Center's provision of gynecological and obstetrical health care will be in compliance with standards in accordance with State licensing and consent requirements.
3. As part of every resident's intake health assessment, women and girls also will receive age-appropriate assessments and preventive health services, as medically appropriate.
4. A pregnant resident will have access to pregnancy services consistent with recognized community guidelines.
5. At no time will a pregnant resident be restrained, absent extraordinary circumstances that render restraints necessary and then subject to the requirements specified in the ICE Family

#### 4.4 Health Care (Females)

Residential Standard on *Use of Physical Control Measures and Restraints*.

6. Medical and mental health interviews, screenings, appraisals, examinations, procedures, and administration of medication will be conducted in settings that respect residents' privacy in accordance with safe operations of the Center.
7. A resident's request to see a health care provider of a specific gender should be accommodated, whenever possible. Otherwise, same-sex chaperones will be provided.

### Standards Affected

Not applicable. This is a new standard.

### Expected Practices

#### A. Overview

In addition to the medical, mental health, and dental services provided to every resident as required by the ICE Family Residential Standard on *Health Care*, every Center will directly or contractually provide women and girls with access to:

- Pregnancy services, including pregnancy testing, routine or specialized prenatal care, postpartum follow-up, lactation services, and abortion services as outlined herein;
- Counseling and assistance for pregnant women in keeping with their express desires in planning for their pregnancy, whether they desire abortion, adoptive services, or to keep the child; and
- Routine, age-appropriate, gynecological health care services, including offering women's specific preventive care.

#### B. Initial Health Intake Screening and Health Assessment

##### 1. Initial Screening

Within 12 hours of arrival, during their initial medical screening, all female residents will receive information on services related to women's health care as provided for in this standard and the ICE Family Residential Standard on *Health Care*.

##### 2. Initial Health Assessment

If the initial health intake screening indicates the possibility of pregnancy, then an immediate referral will be initiated and the resident will receive a health assessment within two business days.

If the initial health intake screening indicates that a resident has experienced prior sexual victimization or perpetrated sexual abuse, staff will, as appropriate, ensure that the resident is immediately referred to a qualified health care or mental health practitioner for health care and/or mental health follow-up as appropriate.

If the initial health intake screening indicates sexual assault within 7 calendar days, then the resident will be referred immediately for health care and/or mental health follow-up as appropriate, consistent with the ICE Family Residential Standard on *Health Care*. Prophylactic

#### 4.4 Health Care (Females)

treatment, emergency contraception, and follow-up examinations for sexually transmitted infections (STIs) will be offered to all victims, as appropriate. Emergency contraception should be available in accordance with local jurisdiction requirements and regulations. The resident will be referred to a provider within 24 hours of identification or sent to an emergency department for further treatment.

If the initial health intake screening indicates any history of domestic abuse or violence, then the resident will be referred for and receive a mental health evaluation within 72 hours consistent with the ICE Family Residential Standard on *Health Care*.

All initial health assessments for women and girls will be provided by a trained and qualified health care provider. In addition to the criteria listed on the health assessment form, the evaluation will inquire about the following as is developmentally appropriate:

- Pregnancy testing and documented results (ages 10-56);
- If the resident is currently nursing (breastfeeding);
- Use of contraception;
- Reproductive history (number of pregnancies, number of live births, number of spontaneous/elective abortions, pregnancy complications, etc.);
- Menstrual cycle;
- History of breast and gynecological problems;
- Family history of breast and gynecological problems; and
- Any history of physical or sexual victimization and when the incident occurred.

Pelvic examination, breast examination, cervical cancer screening, breast cancer screening, and STI screening will be offered and provided as deemed appropriate or necessary by the health care provider.

### C. Preventive Services

Preventative services specific to women will be offered for routine age and developmentally appropriate screenings, to include breast examinations, cervical cancer screening, sexually transmitted infections testing, and mammograms. These services will not interfere with resident's discharge from custody date.

#### 1. Contraception

Upon request, appropriately trained health care personnel within their scope of practice will provide residents with non-directive (impartial) advice and consultation about family planning and birth control, and where medically appropriate, prescribe and dispense birth control.

### D. Pregnancy

Upon confirmation by health care personnel that a woman is pregnant, she will be given medical supervision. Pregnant residents will have access to prenatal and specialized care, and comprehensive counseling inclusive of, but not limited to nutrition, exercise, complications of



**4.4 Health Care (Females)**

pregnancy, prenatal vitamins, labor and delivery, postpartum care, lactation, family planning, and abortion services.

The Center Administrator will ensure that the Field Office Director (FOD) is notified as soon as practicable of any female resident determined by health care personnel to be pregnant.

If a pregnant resident has been identified as having a high-risk pregnancy or a complication of pregnancy, the resident will be referred, as appropriate, to a physician specializing in high-risk pregnancies.

All chemically dependent pregnant residents (psychological dependence includes alcohol, sedatives/hypnotics, anxiolytics and opioids) are considered high risk and referred to an obstetrician or another health care provider capable of addressing their needs within 24-48 hours.

**E. Non-use of Restraints****1. Restraints on Pregnant Women**

At no time will a pregnant resident be restrained, absent extraordinary circumstances that render restraints necessary and then subject to the requirements specified in the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints*.

**F. Abortion Access**

In the event continued residence is necessary and appropriate, and consistent with the practice of our federal partners, if the life of the mother would be endangered by carrying a fetus to term, or in the case of rape or incest, ICE will assume the costs associated with a woman's decision to terminate a pregnancy.

In this instance, or in a situation where a woman opts to fund the termination of her pregnancy, ICE will arrange for transportation at no cost to the resident for the medical appointment and, if requested by the resident, for access to religious counseling, and non-directive (impartial) health care resources, and social counseling, to include outside social services or women's community resources groups.

If a resident requests to terminate her pregnancy, then ICE will document the request in the resident's health records. The resident's statement should be signed personally by the resident and include clear language of the resident's intent.

**G. Mental Health Services**

In addition to mental health services offered to all residents, mental health assessments will be offered to any resident who has recently given birth, miscarried, or terminated a pregnancy.

**References**

- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Use of Physical Control Measures and Restraints

**4.4 Health Care (Females)**

- National Commission on Correctional Health Care, Standards for Health Services in Jails (2014)
- National Commission on Correctional Health Care: Position Statement on Women's Health Care in Correctional Settings (2014)
- "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," 79 Fed. Reg. 13100 (Mar. 7, 2014)

## 4.5 Personal Hygiene

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that Centers will provide adequate bathing facilities and issue and exchange clean clothing, bedding, linens, towels, and personal hygiene items so residents can maintain acceptable levels of personal hygiene.

Various terms used in this standard may be defined in ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Each Center will maintain an inventory of clothing, bedding, linens, towels, and personal hygiene items that is sufficient to meet the needs of residents.
2. Each resident will have sufficient clean bedding, linens, blankets, and towels.
3. Each resident will have sufficient clean clothing that is properly fitted, climatically suitable, durable, and presentable.
4. Residents will be held accountable for clothing, bedding, linens, and towels assigned to them.
5. Residents, including those with disabilities and special needs, will be able to maintain acceptable personal hygiene practices.

**4.5 Personal Hygiene**

## **Standards Affected**

This standard replaces the ICE Family Residential Standard on *Personal Hygiene* dated 12/21/2007.

## **Expected Practices**

### **A. Supply of Clothing, Bedding, Linens, Towels, and Personal Hygiene Items**

Each Center will have written policy and procedures for regularly issuing and exchanging clothing, bedding, linens, towels, personal hygiene items, and diapers. The supply of these items will exceed the minimum required for the number of residents to prevent delay in replacing the items.

To be prepared for unforeseen circumstances, Centers will maintain an excess clothing inventory that is at least 200 percent of the maximum funded resident capacity. This excess will allow for the immediate replacement of items that are lost, destroyed, or worn out.

Clothing or shoes that are lost, unserviceable, indelibly stained, worn out, or bear offensive or otherwise unauthorized markings will be discarded and replaced as soon as practicable, but in no case longer than 24 hours after the initial request for replacement is made.

### **B. Issuance of Clothing**

At no cost to the resident, all new residents will be issued clean, laundered, indoor/outdoor temperature- and size-appropriate presentable clothing during admission. Residents will be provided the opportunity to maintain a combination of personal and Center clothing not to exceed 10 sets at any time.

Arriving residents who do not have serviceable clothing will be provided a minimum of six sets. Minors also will be provided with up to three sets of pajamas upon the request of a parent/guardian.

Issued clothing will not resemble institutional-style clothing.

Centers also will issue shower shoes and sneaker-type footwear to residents who do not arrive at the Center in possession of these items.

Residents will be allowed to keep coats in their possession or have coats readily accessible in areas adjacent to outdoor recreation areas during the appropriate seasons.

### **C. Special Uniforms and Protective Equipment**

Each resident assigned to a special work area will be clothed in accordance with the requirements of the job and, when appropriate, provided protective clothing and equipment in accordance with safety and security considerations.

### **D. Personal Hygiene Items**

Staff will supervise the issuance of personal hygiene items directly to male and female residents appropriate for their gender and will replenish supplies as needed. Distribution of hygiene items

**4.5 Personal Hygiene**

will not be used as reward or punishment. Residents will not be allowed to distribute hygiene items.

Each resident will receive, at a minimum, the following items:

- One bar of bath soap, or equivalent;
- Deodorant;
- One comb/hairbrush;
- One tube of toothpaste;
- One toothbrush;
- One bottle of shampoo, or equivalent;
- One bottle of hair conditioner;
- One container of skin lotion;
- Hygiene items for children and infants (baby wipes, diapers, diaper rash ointment, etc.);
- One bottle of sunscreen;
- Lip balm (in tube/stick rather than tub form); and
- Any other items designated necessary by the Field Office Director.

The Center Administrator may modify this list as needed (*e.g.*, to accommodate the use of bulk liquid soap and shampoo dispensers).

The distribution of razors must be strictly controlled. Disposable razors will be provided to residents on a daily basis. Razors will be issued and collected daily by staff. Residents are not permitted to share razors.

Female residents will be issued and may retain sufficient feminine hygiene items, including sanitary pads and tampons, for use during their menstrual cycle. Unbreakable brushes with soft, synthetic bristles may replace combs. Cosmetics are prohibited, as are electric rollers, curling irons, hair dryers, and similar appliances.

The responsible living and activity area staff member will replenish personal hygiene items on an as-needed basis, in accordance with written Center procedures. The Center Administrator may establish an empty container exchange system.

If the Center does not have a resident commissary, then personal hygiene items from sources other than the issuing staff member may be permitted into the living and activity areas only upon approval of the Center Administrator.

**E. Bathing and Toilet Facilities**

Residents will be provided with the following:

- An adequate number of toilets, accessible 24 hours per day, which can be used without staff assistance at a minimum ratio of 1 toilet to 8 residents;

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- For males, urinals may be substituted for up to one-half of the toilets. All living and activity areas with three or more residents must have at least two toilets;
- An adequate number of washbasins with temperature controlled hot and cold running water 24 hours per day;
- One washbasin to eight residents;
- Operable showers that are thermostatically controlled to temperatures between 100 degrees and 120 degrees Fahrenheit, to ensure safety and promote hygienic practices;
- Minimum ratio of one shower to eight residents; and
- Adequate facilities and/or equipment to bathe infants and toddlers.

Periodic inspections of living and activity areas will measure and document water temperature in the daily log.

Residents will be provided with a reasonably private environment in accordance with safety and security needs.

Minors 9 years of age and older will shower in their gender-specific shower areas during open shower times. Should a resident's child 9 years of age and older need assistance, residents should see staff for accommodations. Minors under 9 years of age will shower only under the direct supervision of their parent/guardian.

Residents will be able to shower, perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances (*e.g.* resident in distress or other safety issue) or when such viewing is incidental to routine wellness checks or is otherwise appropriate in connection with a medical examination. Staff of the opposite gender will announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.

When operationally feasible, transgender and intersex residents will be given the opportunity to shower separately from others.

Residents with disabilities will be provided the facilities and support needed for self-care and personal hygiene in a reasonably private environment in which the individual can maintain dignity. When necessary, assistance to disabled residents who cannot perform basic life functions will be provided by individuals who are trained and qualified to understand problems and challenges faced by persons with physical and/or mental impairments. Such training may be provided by the health services authority and may involve the expertise of relevant community organizations and government agencies. Discrimination on the basis of disability is prohibited.

**F. Hair Care**

Residents are allowed freedom in personal grooming unless a valid safety, security, or medical concern requires an exception that is fully justified and documented.

Residents will be provided hair care services in a manner and environment that promotes sanitation and safety, in accordance with the Barber Operations section in the ICE Family

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Residential Standard on *Environmental Health and Safety* and the ICE Family Residential Standard on *Religious Practices*.

Indigent residents will be provided free hair care services.

**G. Issuance of Bedding, Linens, and Towels**

All residents will be issued clean bedding, linens, towels, and washcloths and be held accountable for those items.

The standard issues will be, at a minimum:

- Bedding: one mattress, one blanket, and one pillow (additional blankets will be issued, based on local indoor-outdoor temperatures);
- Linens: two sheets and one pillowcase;
- Towels: two towels; and
- Two washcloths.

**H. Exchange Requirements**

Residents will be provided with clean clothing, linens, and towels on the following basis:

- A daily change of socks and undergarments. An additional exchange of undergarments will be made available to residents if necessary for health or sanitation reasons;
- At least twice weekly exchange of outer garments (with a maximum of 72 hours between changes). More frequent exchanges of outer garments may be appropriate, especially in hot or humid climates;
- At least weekly exchange of sheets, towels, and pillowcases at a minimum;
- An additional exchange of bedding, linens, towels, or outer garments will be made available to residents if necessary for health or sanitation reasons;
- Additional changes of all of the above also may be necessary due to the needs of small children and infants;
- Resident volunteer workers may require exchanges of outer garments more frequently than every 72 hours; and
- Volunteer food service workers will exchange outer garments daily.

Clothing exchanges generally will be one-for-one to prevent hoarding and to ensure an adequate supply.

**I. Resident Laundry**

Residents are not permitted to wash clothing, bedding, linens, tennis shoes, or other items in the living and activity areas, unless proper washing and drying equipment is available and the Center has written policy and procedures for their use. Any washing and drying policies and procedures



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will be posted in the laundry area and will be included in the resident handbook and local supplement, as appropriate.

When Centers provide washing and drying machines for resident use, the following will be required:

- Residents will be permitted only to wash clothing, bedding, linens, shoes, or other items in proper washing and drying equipment;
- The Center Administrator will have a written policy and procedures for such use;
- Laundry policies and procedures will be posted in the laundry area, and will be included in the resident handbook and local supplement, as appropriate; and
- Residents will receive required training for the safe operation of the washers and dryers based on manufacturer's recommendations.

Centers will provide laundry services, detergent, fabric softener, and other laundry products at no charge to the residents.

## References

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Environmental Health and Safety
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Religious Practices
- ICE Family Residential Standard on Resident Handbook

## 4.6 Significant Self-harm and Suicide Prevention and Intervention

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects the health and well-being of ICE residents through a comprehensive Significant Self-Harm and Suicide Prevention and Intervention Program that minimizes risk.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. All Center staff who interact with and/or are responsible for supervising residents will receive comprehensive training initially during orientation and repeated at least annually, on effective methods for identifying significant self-harm, as well as on suicide prevention and intervention for residents.
2. Staff will act to prevent significant self-harm and suicide with appropriate sensitivity, supervision, medical and behavioral health intervention, indicated referrals, and emergency medical response.

#### 4.6 Significant Self-harm and Suicide Prevention and Intervention

3. Any resident identified as being at risk for significant self-harm or suicide will receive immediate medical and behavioral health intervention, appropriate treatment, monitoring, and therapeutic follow up, in accordance with appropriate standards of care, ICE policies including the ICE Performance Based National Detention Standards (PBNDS), and IHSC guidance. In order to provide the services listed above, residents will be transferred to an appropriate facility. The FOD and JFRMU Chief will be notified when a resident requires transfer.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Suicide Prevention and Intervention* dated 12/21/2007.

### Expected Practices

Each Center will have a written self-harm and suicide prevention and intervention program, including a multidisciplinary suicide prevention committee, that will be reviewed and approved by the Clinical Medical Authority (CMA), and approved and signed by the Health Services Administrator (HSA) and Center Administrator. The CMA, HSA, and Center Administrator will review the program annually.

The multidisciplinary suicide prevention committee shall, at a minimum, comprise representatives from supervisory, mental health, and medical staff. The committee shall meet on at least a quarterly basis to provide input regarding all aspects of the Center's suicide prevention and intervention program, including suicide prevention policies and staff training. The committee shall convene following any suicide attempt to review and, if necessary, assist in the implementation of corrective actions.

At a minimum, the suicide prevention and intervention program will include procedures to address suicidal or potentially suicidal residents. Key components of this program must include the following:

- Staff training;
- Identification;
- Referral;
- Evaluation;
- Treatment;
- Housing;
- Monitoring;
- Communication;
- Intervention;

#### 4.6 Significant Self-harm and Suicide Prevention and Intervention

- Notification and reporting;
- Review; and
- Debriefing.

#### B. Staff Training

All Center staff members who interact with and/or are responsible for residents will receive comprehensive suicide prevention training, during orientation and at least annually. Initial suicide prevention training for all staff responsible for supervising residents should consist of a minimum of eight hours of instruction. Subsequent annual suicide prevention training should consist of a minimum of two hours of refresher instruction. All of the following topics should be incorporated into the required self-harm and suicide prevention training:

- Demographic, cultural, and precipitating factors of self-harm or suicidal behavior;
- Environmental concerns: factors of living at the Center that can contribute to suicidal behavior.
- Recognizing verbal and behavioral cues that indicate potential suicide;
- Responding to depressed and suicidal residents;
- Effective communication between Center administrative, supervisory, and health care staff;
- Required on-site and off-site referral procedures;
- Constant observation and suicide-watch procedures;
- Follow-up monitoring of residents who have attempted suicide already;
- Reporting and written documentation procedures, to include completion of suicide risk assessment (SRA);
- First aid training: Standard first aid training, cardiopulmonary resuscitation (CPR) training, and training in the use of emergency equipment (that may be located in each living and activity area of the Center);
- Liability issues associated with resident suicide; and
- Documentation of significant self-harm or suicidal behavior.

Requesting that a resident promise not to engage in suicidal behavior, also known as “contracting for safety,” is not an effective method of self-harm or suicide prevention. Use of this practice is not recognized or supported by experts. “Contracting for safety” provides no guarantee that the patient will not attempt suicide and may give staff a false sense of security. This practice is not to be relied on by staff.

#### C. Identification

Residents may be identified as being at risk for self-harm or suicide at any time in accordance with the ICE Family Residential Standard on *Health Care*.

#### **4.6 Significant Self-harm and Suicide Prevention and Intervention**

##### **1. Initial Screening**

All residents will receive an age-appropriate initial mental health screening within 12 hours of admission by a qualified health care professional, as required by the “Medical and Mental Health Screening of New Arrivals” in the ICE Family Residential Standard on *Health Care*. The results of the screening will be documented on the approved intake screening form, which contains observation and interview questions related to the potential for significant self-harm/suicide. Residents who are identified as being “at risk” for suicide will receive a mental health evaluation by a behavioral health provider (BHP) or other appropriately trained medical professional.

##### **2. Ongoing Identification**

Residents also may be identified as being at risk for significant self-harm/suicide at any time while in the Center. Staff must therefore remain vigilant in recognizing and appropriately reporting when a risk is identified. This identification may result from a self-referral or through daily observation and/or interaction with medical staff, contract security staff, or ICE staff. Qualified health care staff will be available 24 hours per day either in person or on call for immediate consultation.

##### **3. Significant Self-harm/Suicidal Resident**

If health care staff determine that a resident is at imminent risk of bodily injury or death, then health care staff may make a recommendation to hospitalize the resident for purposes of his/her evaluation and/or treatment, in accordance with the ICE Family Residential Standard on *Health Care* and state licensing requirements.

If a resident is not competent to consent to hospitalization or other health care, or if the resident refuses life-sustaining treatment, it may be necessary to petition the relevant federal court to intervene to ensure appropriate medical and mental health care for the resident. In such cases, Center staff will work closely with the FOD, the JFRMU Chief, and the Office of the Principal Legal Advisor to determine the appropriate course of action.

#### **D. Referral**

Residents who are identified as being at risk for significant self-harm or suicide will be referred immediately to a BHP or medical professional for an evaluation. Referral to the BHP should be immediate when the BHP is on-site. When a BHP is not available on-site, medical should be notified immediately to begin the assessment process. The BHP must complete a comprehensive mental health evaluation within 24 hours of identification. Until this evaluation takes place, Center staff will place the resident in a secure environment and ensure his or her safety through constant one-to-one visual observation.

Center custody staff, in consultation with the CMA, will develop a care/supervision plan for the resident’s children, which will require at a minimum one-on-one supervision for the duration of the parent’s/guardian’s episode. The Center will work with the Field Office Director (FOD) and Juvenile and Family Residential Management Unit (JFRMU) Chief to develop this plan, which will provide for the safety and security of Center minors.

#### **4.6 Significant Self-harm and Suicide Prevention and Intervention**

##### **E. Comprehensive Suicide Risk Assessment**

An age-appropriate evaluation and suicide risk assessment will be conducted by a qualified BHP or medical professional who will determine the level of suicide risk, mental health needs, capacity of the Center to meet these needs, level of observation or monitoring needed, and any need for transfer for inpatient psychiatric care. If a BHP is not on-site, staff should notify the on-call BHP and arrange for the BHP to complete a comprehensive suicide risk assessment as soon as possible, but no later than 24 hours of identification. This evaluation will be documented in the resident's medical record and must include the following information:

- Relevant history, including static risk factors such as past suicide attempts and non-suicidal self injury;
- Clinical (dynamic) risk factors;
- Institutional/situational risk factors;
- Protective factors and coping skills;
- Mental status evaluation;
- A determination of suicide risk level;
- Lethality of possible suicide plan (if known);
- Level of observation or monitoring needed (e.g., close supervision or suicide watch);
- Diagnoses;
- Instructions to medical staff for care;
- Referral/transfer for inpatient care (if needed); and
- Reassessment time frames.

Residents placed on suicide watch will be re-evaluated by qualified health care staff on a daily basis, and this re-evaluation must be documented in the resident's medical record.

Only the qualified BHP, CMA, or designee may discontinue a suicide watch. The BHP will complete a suicide risk assessment before the resident is released from suicide watch.

##### **F. Treatment Plan**

Based on the evaluation, as stipulated above, a qualified BHP will develop a treatment plan. This plan must be documented and placed in the resident's medical record. The treatment plan will address the historical, environmental, and psychological factors that contribute to the resident's suicidal ideation and/or level of suicide risk. The treatment plan will include:

- Strategies and interventions to be followed by Center staff and resident if suicidal ideation reoccurs;
- Mental health and other strategies for improved functioning; and
- Regular mental health and other follow-up appointments as clinically indicated.

#### **4.6 Significant Self-harm and Suicide Prevention and Intervention**

##### **G. Housing and Monitoring**

A suicidal resident requires close supervision or monitoring in a setting that minimizes opportunities for self-harm. If a staff member identifies someone who is at risk of significant self-harm or suicide, then the resident must be placed on suicide precautions and referred immediately to a qualified BHP. Health staff should transfer the resident (and parent, as appropriate) from the Center to the nearest hospital if needed to ensure the safety of the resident.

The Center administrator will immediately notify the FOD and JFRMU Chief of such transfer and indicate what level of monitoring the Center is providing.

All residents who return from the hospital will remain in general population and will receive documented close observation by Center staff at staggered intervals not to exceed 15 minutes (e.g. 5, 10, 7 minutes), checks at least every 8 hours by health care staff, and daily mental health evaluation and treatment by a qualified BHP. It will also be determined whether or not continued residence at the FRC is appropriate.

Deprivations and restrictions placed on suicidal residents must be kept at a minimum. Suicidal residents may be discouraged from expressing their intentions if the consequences of reporting those intentions are unpleasant or understood to result in punitive treatment or punishment. Placing suicidal residents in conditions of confinement that are worse than those experienced by other residents can result in the resident not discussing his or her suicidal intentions and falsely showing an appearance of a swift recovery.

##### **1. Transfer to an Outside Facility**

Any resident who is believed to be in need of seclusion and/or restraint due to self-harming or suicidal behavior should be transferred to a psychiatric facility, if deemed medically necessary to appropriately treat the needs of the resident. If the parent/guardian is not able to care for the child, consult with the FOD and JFRMU Chief.

Suicidal residents will be allowed to shower, perform bodily functions, and change clothing with as much privacy as possible under the continuous observation of staff, and without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances. Although staff of the opposite gender can be assigned to suicide watch, including constant observation, the Center must have procedures in place that enable a resident on suicide watch to avoid exposing himself or herself to nonmedical staff of the opposite gender. This may be accomplished, for example, by substituting medical staff or same gender Center staff to observe the periods of time when a resident is showering, performing bodily functions, or changing clothes. It may also be accomplished by providing a shower with a partial curtain or other privacy shields. The privacy standards apply whether the viewing occurs in a cell or elsewhere. However, any privacy accommodations must be implemented in a way that does not pose a safety risk for the individual on suicide watch. Safety is paramount when conducting a suicide watch, and if an immediate safety concern or resident conduct makes it impractical to provide same gender coverage during a period in which the resident is undressed, the resident should continue to be observed, and any such incident should be documented.



#### **4.6 Significant Self-harm and Suicide Prevention and Intervention**

##### **2. Post-discharge from Suicide Watch**

All residents discharged from suicide precautions should be re-assessed only by a qualified BHP, and within 24 hours initially. Subsequently, ongoing assessment should be conducted by a qualified health care staff member at intervals prescribed by the treatment plan and consistent with the level of acuity.

#### **H. Communication**

##### **1. Transfer of Resident to ICE/Enforcement and Removal Operations (ERO) Custody**

Upon change of custody to ICE/ERO from other federal, state, or local custody, ICE/ERO staff or a designee will inquire of the sending facility about prior suicidal behaviors or actions and, if such behaviors or actions are identified, will ensure resident safety pending evaluation by a medical provider. The patient's "medical summary report" will be transferred in accordance with the ICE Family Residential Standard on *Resident Transfers*.

##### **2. Continuity of Communication Regarding Residents in ICE/ERO Custody**

When self-harm or suicide risk is identified, consistent communication will be maintained between medical, mental health, and Center staff through various mechanisms to ensure resident safety. Such communication will include the following:

- Intake forms;
- Daily briefings;
- Shift change briefings;
- Medical progress notes;
- Special needs forms;
- Medical/psychiatric alerts;
- Incident reports; and
- Transfer summaries.

#### **I. Intervention**

Following a suicide attempt, staff will initiate and continue appropriate Basic Life Support (BLS) measures until relieved by health care personnel. Arriving medical personnel shall perform appropriate medical evaluation and intervention. When required, 911 will be activated by the responding Center staff member. The CMA or designee will be notified immediately about any suicide attempt, as well as when a resident requires transfer to a local hospital or emergency room.

#### **J. Notification and Reporting**

In the event of a suicide attempt, all appropriate ICE and ICE Health Service Corps officials will be notified through the chain of command. The resident's family, if known, and appropriate outside authorities will also be immediately notified.

#### **4.6 Significant Self-harm and Suicide Prevention and Intervention**

In the event that a resident dies as a result of a suicide, ICE policy on notification and reporting of deaths in ICE custody will be followed.

Should a parent/guardian die as a result of suicide, the Center will work with the FOD and JFRMU Chief to determine the appropriate course of action for the resident's children. The Center will implement an approved care plan pending transfer or discharge.

In the case of either a suicide attempt or a fatality, medical staff will complete an "Incident Report" form or its equivalent within 24 hours, and all staff who came into contact with the resident before the suicide attempt or death, including all clinical staff who responded to the attempted suicide or death, will submit a statement describing their knowledge of the resident and the incident. Medical staff may also document their responsive actions in the medical record.

#### **K. Review**

Every death that results from a suicide will be subject to a mortality review process and ICE policy on notification and reporting of deaths in ICE custody will be followed. ICE will make arrangements to complete a psychological reconstruction of the suicide. The mortality review process will include review of: circumstances surrounding the incident, Center procedures relevant to the incident, training of staff, medical/mental health reports, identification of possible precipitating factors, and recommendations for changes in response to the incident (e.g., policy, training or re-training, counseling, reprimand, or discipline of staff identified as failing to follow suicide prevention procedures, physical plant, medical or mental health services, and operational procedures).

#### **L. Debriefing and Resident Mental Health Follow-Up**

A critical incident debriefing following a suicide or serious suicide attempt will be offered to all affected staff and residents within 24 to 72 hours after the critical incident.

Following a suicide or serious suicide attempt, the Center should offer appropriate mental health services to the residents who may have been affected.

### **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Transfers
- ICE Notification and Reporting of Resident Deaths Directive, No 7-9.0
- National Commission on Correctional Health Care, Standards for Health Services in Jails. (2008): J-E-02, J-E-05, J-G-05, Appendix C

## 4.7 Terminal Illness, Advance Directives, and Death

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that each Center's continuum of health care services addresses terminal illness and advance directives, and provides specific guidance in the event of a resident's death.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. The continuum of health care services provided to adult residents will address terminal illness and advance directives. Appropriate to the circumstances, each adult resident will be provided with an option to complete an advance medical directive for themselves and/or their minor child(ren).
2. The Center will be in compliance with standards set by ICE in its provision of medical care to terminally ill residents.
3. In the event of a resident's death, or if a resident becomes gravely ill, specified officials as listed herein and required by ICE policies as well as the resident's designated next-of-kin will be notified immediately.

#### 4.7 Terminal Illness, Advance Directives, and Death

4. In the event of a resident's death, required notifications will be made to authorities outside of ICE/Enforcement and Removal Operations (ERO) (e.g., the local coroner or medical examiner), and required procedures will be followed regarding matters such as autopsies, death certificates, burials, and the disposition of decedent's property. Established guidelines and applicable laws will be observed in regard to notification of a resident death while in custody. In addition, specific procedures required by ICE policy on notification and reporting of deaths in custody will be followed.
5. The Health Services Administrator (HSA) at the Center where the resident was housed at the time of his/her death will ensure the decedent's medical record is reviewed for completeness and closed out.
6. In the event of a resident death, all property of the resident will be returned within two weeks to the resident's next-of-kin, unless property of the decedent is being held as part of an investigation into the circumstances of death.
7. In the event an adult resident becomes gravely ill and is unable to care for his/her child(ren), a care plan that requires one-on-one supervision for any child(ren) in ICE custody will be developed by the Center administrator. The ERO Field Office Director (FOD) and the Juvenile and Family Residential Management Unit (JFRMU) Chief, in conjunction with the Office of the Principal Legal Advisor (OPLA) will approve this plan.
8. Should an adult resident die, the Center Administrator will coordinate with the FOD, OPLA, and the JFRMU Chief to determine appropriate next steps with regard to the resident's child(ren) in ICE custody.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Terminal Illness, Advance Directives, and Death* dated 12/21/2007.

### Expected Practices

#### A. Terminal Illness

When a resident's medical condition becomes life-threatening, the Center's Clinical Medical Authority (CMA) or HSA will:

- Arrange the transfer of the resident to an appropriate off-site medical or community facility if appropriate and medically necessary;
- Immediately notify the Center Administrator and/or ICE/ERO FOD both verbally and in writing of the resident's condition. The memorandum will describe the resident's illness and prognosis.

The Center Administrator or the FOD will notify family members, if known (unless the resident has expressed a wish to the contrary) and the resident's attorney of record, if known (unless the resident has expressed a wish to the contrary).

#### **4.7 Terminal Illness, Advance Directives, and Death**

The Center Administrator, or designee, will notify ICE/ERO and ICE Health Services Corps (IHSC) immediately.

A resident in a community hospital remains detained under ICE/ERO authority, such that ICE/ERO retains the authority to make administrative, non-medical decisions affecting the resident (visitors, movement, authorization of care services, etc.). However, upon physical transfer of the patient to the community hospital's care, the hospital assumes:

- Medical decision-making authority consistent with the facility agreement (drug regimen, lab tests, X-rays, treatments, etc.); and
- Authority over the resident's treatment, which is exercised by the hospital's medical staff once IHSC is notified of admission. However, IHSC-managed care and the Center's HSA will follow up on a daily basis to receive information about major developments.

To that end, the hospital's internal rules and procedures concerning seriously ill, injured, and dying patients will apply to residents. The FOD or designee will, unless the resident has expressed a wish to the contrary, immediately notify (or make reasonable efforts to notify) the resident's next-of-kin and attorney of record of the resident's medical condition and status, the resident's location, and the visiting hours and rules at that location, in a language or manner that they can understand.

ICE/ERO, in conjunction with the medical provider, will provide family members and any others as much opportunity for visitation as possible, in keeping with safe and secure Center and facility operations. Center and hospital staff will be reminded to observe and maintain safety and security measures while finding ways to accommodate the family and resident needs respectfully at this sensitive time.

#### **B. Living Wills and Advance Directives**

Once a resident is diagnosed as having a terminal illness or remaining life expectancy of less than one year, the adult resident will be provided an opportunity to complete an advance medical directive for themselves and/or their minor child(ren). Medical staff will offer adult residents access to forms or other related materials on Advance Directives or Living Wills, including the appropriate translation services when needed. Likewise, when the resident is held at an off-site facility, staff at that facility may assist the resident in completing an Advance Directive and/or Living Will.

All Centers will use the state "Advance Directive" form, or its equivalent, appropriate to the state in which the Center is located, for implementing Living Wills and Advance Directives, the guidelines for which include instructions for residents who wish to:

- Have a living will other than the generic form made available by medical staff; or
- Appoint another individual to make advance decisions for them.

At any time, a resident may request forms or other related materials on Advance Directives or Living Wills. These may be prepared by the resident's attorney at the resident's expense.

When the terms of the Advance Directive must be implemented, the medical professional overseeing the resident's care will contact the appropriate ICE/ERO representative.

#### **4.7 Terminal Illness, Advance Directives, and Death**

ICE/ERO may seek judicial or administrative review of a resident's Advance Directive as appropriate.

### **C. Do Not Resuscitate (DNR) Orders**

Each Center housing residents will establish written policy and procedures governing DNR orders. Local procedures and guidelines must be in accordance with the laws of the state in which the Center is located.

Health care will continue to be provided consistent with the DNR order. If the DNR order is not physically present or there is any question about the validity of the document, then appropriate resuscitative aid will be rendered until the existence of an active, properly executed DNR is verified.

Each Center's DNR policy will comply with the following stipulations:

- A DNR written by a staff physician requires the CMA's approval;
- The policy will protect basic patient rights and otherwise comply with state requirements and the jurisdiction in which the Center is located;
- A decision to withhold resuscitative services will be considered only under specified conditions:
  - The resident is diagnosed as having a terminal illness;
  - The resident has requested and signed the order (if the resident is unconscious, incompetent, or otherwise unable to participate in the decision, staff will attempt to obtain the written concurrence of an immediate family member, and the attending physician will document these efforts in the medical record); and
  - The decision is consistent with sound medical practice, and is not in any way associated with assisting suicide, euthanasia, or other such measures to hasten death.
- The resident's medical file will include documentation validating the DNR order:
  - A standard stipulation at the front of the in-patient record, and explicit directions: "Do Not Resuscitate" or "DNR"; and
  - Forms and memoranda recording:
    - Diagnosis and prognosis;
    - Express wishes of the resident (e.g., living will, advance directive, or other signed document);
    - Immediate family's wishes, if immediate family has been identified;
    - Consensual decisions and recommendations of medical professionals, identified by name and title;
    - Mental competency (psychiatric) evaluation, if resident concurred in, but did not initiate, the DNR decision; and
    - Informed consent evidenced, among other things, by the legibility of the DNR order,

#### **4.7 Terminal Illness, Advance Directives, and Death**

signed by the ordering physician and CMA.

- A resident with a DNR order may receive all therapeutic efforts short of resuscitation;
- The Center will follow written procedures for notifying attending medical staff of the DNR order; and
- As soon as practicable, the CMA or HSA will notify the IHSC Medical Director and the Office of the Principal Legal Advisor of the basic circumstances of any resident for whom a DNR order has been filed in the medical record.

#### **D. Organ Donation by Residents**

If an adult resident wants to donate an organ:

- The organ recipient must be a member of the donor's immediate family;
- The resident may not donate blood or blood products;
- All costs associated with the organ donation (e.g., hospitalization, fees) will be at the expense of the resident, involving no government funds;
- The resident will sign a statement that documents his/her:
  - Decision to donate the organ to the specified family member;
  - Understanding and acceptance of the risks associated with the operation;
  - Acknowledgement that the decision was undertaken of his/her own free will and without coercion or duress; and
  - Understanding that the government will not be held responsible for any resulting medical complications or financial obligations incurred.
- IHSC medical staff will assist in the preliminary medical evaluation, contingent on the availability of resources; and
- The Center will coordinate arrangements for the donation.

#### **E. Death of a Resident in ICE/ERO Custody**

Each Center will have written policy and procedures to notify ICE/ERO officials of a resident's death. ICE/ERO officials will take action in accordance with ICE policy on notification and reporting of deaths in custody, including notifying the resident's next-of-kin and consular officials.

Should a parent/guardian die while in ICE/ERO custody at a Family Residential Center, the Center will work with the FOD, OPLA, and the JFRMU Chief to determine the appropriate course of action for that individual's child(ren) in ICE custody. The Center will implement a care plan approved by the JFRMU Chief pending transfer or discharge.

#### **F. Disposition of Property**

Centers will turn over the property of the decedent to ICE/ERO within one week for processing and disposition. Unless property of a decedent is being held as part of an investigation into the



#### **4.7 Terminal Illness, Advance Directives, and Death**

circumstances of death, that property should be returned to the decedent's next-of-kin, if known, within two weeks.

### **G. Disposition of Remains**

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

If the family wishes to claim the remains but cannot afford the transportation costs, then ICE/ERO may assist the family by transporting the remains to a location in the United States. As a rule, the family alone is responsible for researching and complying with airline rules and federal regulations on transporting the body; however, ICE/ERO may coordinate the logistical details involved in returning the remains.

If family members cannot be located or decline orally or in writing to claim the remains, then ICE/ERO will notify the consulate, in writing, after which the consulate will have seven calendar days to claim the remains and be responsible for making the necessary arrangements and paying all costs incurred (e.g., moving the body, burial).

If neither the family nor the consulate claims the remains, then ICE/ERO will schedule an indigent's burial, consistent with local procedures. However, if the resident's record indicates U.S. military service, then before proceeding with the indigent burial arrangements, ICE/ERO will contact the Department of Veterans Affairs to determine whether the decedent is eligible for burial benefits.

The Chaplain may advise the Center Administrator and others involved about religious considerations that could influence the decision about the disposition of remains.

Under no circumstances will ICE/ERO authorize cremation or donation of the remains for medical research.

### **H. Death Certificate**

The Center Administrator will specify policy and procedures regarding responsibility for proper distribution of the death certificate, as follows:

- Send the original to the person who claimed the body, with a certified copy in the alien file (A-file) on the decedent; or
- If the decedent received an indigent's burial, then place the original death certificate in the A-file.

### **I. Autopsies**

Each Center will have written policy and procedures to implement the provisions detailed below in this section.

- The Center Chaplain will be involved in formulation of the Center's procedures;

#### 4.7 Terminal Illness, Advance Directives, and Death

- Because state laws vary greatly, including when to contact the coroner or medical examiner, the ICE Office of the Principal Legal Advisor will be consulted; and
- A copy of the written procedures will be forwarded to the ICE Office of the Principal Legal Advisor.

The written procedures will address, at a minimum, the following:

- Contacting the local coroner or medical examiner, in accordance with established guidelines and applicable laws;
- Scheduling the autopsy;
- Identifying the person who will perform the autopsy;
- Obtaining the official death certificate; and
- Transporting the body to the coroner or medical examiner's office.

##### 1. Who May Order an Autopsy

The Federal Bureau of Investigation (FBI), local coroner, medical examiner, ICE personnel, or clinical medical/administrative health authority may order an autopsy and related scientific or medical tests to be performed in a homicide, suicide, fatal accident, or other resident's death, in accordance with established guidelines and applicable laws.

The FBI, local coroner, medical examiner, ICE personnel, or clinical medical/administrative health authority may order an autopsy or post-mortem operation for other cases, with the written consent of a person authorized under state law to give such consent (e.g., the local coroner or medical examiner, or next-of-kin), or authorize a tissue transfer authorized in advance by the decedent.

##### 2. Making Arrangements for an Autopsy

Medical staff will arrange for the approved autopsy to be performed by the local coroner or medical examiner, in accordance with established guidelines and applicable laws:

- While a decision on an autopsy is pending, no action will be taken that will affect the validity of the autopsy results; and
- Local law also may require an autopsy for death occurring when the decedent was otherwise unattended by a physician.

##### 3. Religious Considerations

It is critical that the FOD or designee verify the decedent's religious preference prior to final authorizations for autopsies or embalming, and accommodate religion-specific requirements.

## References

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes

#### **4.7 Terminal Illness, Advance Directives, and Death**

- ICE Policy 11003.2, Notification and Reporting of Resident Deaths, May 19, 2011
- National Commission on Correctional Health Care, Standards for Health Care in Jails (2008): 109

## 4.8 Disability Identification, Assessment, and Accommodation

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard requires that Centers housing ICE/ERO residents act affirmatively to prevent disability discrimination. It outlines the necessary processes to ensure that residents with a disability will have an equal opportunity to participate in, access, and enjoy the benefits of the Center's programs, services, and activities. Such participation will be accomplished in the least restrictive and most integrated setting possible, through the provision of reasonable accommodations, modifications, and/or auxiliary aids and services, as necessary, and in a Center that is physically accessible.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

For purposes of this standard, reasonable accommodations, disability-related modifications, and auxiliary aids and services are collectively referred to as "accommodations" or "reasonable accommodations". The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. In addition to the requirements in this standard, the Center will comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990, as amended (ADA), if applicable, and any other applicable federal, state or local laws or regulations related to nondiscrimination and accommodation for individuals with disabilities.

#### **4.8 Disability Identification, Assessment, and Accommodation**

2. The Center will provide reasonable accommodations so that residents with disabilities have an equal opportunity to access, participate in, or benefit from the Center's programs, services, and activities.
3. When considering what reasonable accommodations to provide, the Center will engage in an interactive and individualized process that considers the resident's needs and gives primary consideration to the preferences of the resident with a disability, as outlined in this standard.
4. The Center will develop policies or procedures to allow for effective communication with residents with disabilities – which may include the provision of auxiliary aids and services – during the interactive process as well as within the Center generally.
5. Each Center will designate at least one staff member to serve as the Center's Disability Compliance Manager. This individual will assist in ensuring compliance with this standard and all applicable federal, state and local laws related to accommodations for residents with disabilities.
6. The Center orientation program and the resident handbook and local supplement (as appropriate) will notify and inform residents about the Center's disability accommodations policy, including their right to request reasonable accommodations and how to make such a request.
7. Center staff will receive training on reasonable accommodations policies and procedures, to include the actions they must take upon identifying a resident with a disability who may require an accommodation, modification, and/or auxiliary aid or service.
8. The Center will provide residents with disabilities who are limited in their English proficiency (LEP) with meaningful access to its programs and activities through language assistance, including bilingual staff or professional interpretation and translation services. Meaningful access to Center programs and activities includes the effective communication of the applicable content and procedures in this standard.
9. The Center will provide physical access to programs and activities in the least restrictive setting possible, and in the most integrated setting appropriate to the needs of the resident with a disability. Residents with disabilities requiring an assistive device, such as a crutch or wheelchair, will normally be permitted to keep those items with them at all times. Removal of any such devices because of concerns related to safety and security must be based on individualized review and the justification documented. A resident's disability or need for assistive devices or equipment may not provide the sole basis for the Center's decision to place the resident apart from the rest of the resident population.
10. Compliance with the reasonable accommodations policies and procedures articulated in this standard will be consistently documented, as stated in this standard.

#### 4.8 Disability Identification, Assessment, and Accommodation

11. The Center administrator will convene a multidisciplinary team to assess the cases of residents with communication and mobility impairments, residents whose initial requests for accommodations have been denied, and complex cases. The multidisciplinary team will determine whether the resident has a disability, whether the resident requires an accommodation to access the Center's programs and activities, and whether to grant or recommend denying the requested accommodation. Any denial by the multidisciplinary team of a request for accommodation related to a disability must be approved by the Center administrator and Juvenile and Family Residential Management Unit (JFRMU) Chief.
12. The local ICE/ERO Field Office and JFRMU Chief will be notified no later than 72 hours after the completed review and assessment of any resident with a communication or mobility impairment. Centers will also notify the Field Office and JFRMU Chief within 72 hours of any denial of a resident's request for a disability-related accommodation.
13. Residents will be permitted to raise concerns about disability-related accommodations and/or the accommodations process through the grievance system, as outlined in the ICE Family Residential Standard on *Grievance System*. Centers will ensure that residents with disabilities have equal opportunity to access and participate in the grievance system, including by allowing for effective communication, which can include the provision of auxiliary aids and services, throughout the process.

### Standards Affected

Not applicable. This is a new standard.

### Expected Practices

#### A. Definitions

##### 1. Disability

For purposes of these standards, the term "disability" means either of the below:

- a physical or mental impairment that substantially limits one or more of an individual's major life activities; or
- a record of such a physical or mental impairment.

"Major life activities" are basic activities that a resident without a disability can perform with little or no difficulty while in residence, including, but not limited to, caring for oneself and child(ren), performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity can also include the operation of major bodily functions, like the immune, endocrine, and neurological systems; normal cell growth; digestion, respiration, and circulation; and the operations of the bowel, bladder, and brain.

#### **4.8 Disability Identification, Assessment, and Accommodation**

##### **2. Communication Impairments**

Residents with “communication impairments” include residents with physical, hearing, vision, and speech impairments (e.g., residents who have hearing loss or are deaf; blind; have visual impairments; or are nonverbal).

##### **3. Mobility Impairments**

Residents with “mobility impairments” include residents with physical impairments who require a wheelchair, crutches, prosthesis, cane, or other mobility device, or other mobility assistance.

##### **4. Programs, Services, or Activities**

For purposes of these standards, the “programs,” “services,” “benefits,” and/or “activities” of a Center include all aspects of the Center’s operations that involve residents. These include, but are not limited to, housing placements, medical care, safety and security protocols, food services, correspondence, visitation, grievance systems, transfers, and resident programming and scheduled activities such as law and leisure libraries, religious services, educational or vocational classes, work programs, and recreation.

##### **5. Auxiliary Aids or Services**

“Auxiliary aids or services” are services or devices that allow for effective communication by affording individuals with impaired vision, hearing, speaking, sensory, and manual skills an equal opportunity to participate in, and enjoy the benefits of, programs and activities. Such aids or services include interpreters, written materials, note-takers, video remote interpreting services, or other effective methods of making aurally delivered materials available to residents with hearing impairments; readers, taped texts, materials or displays in Braille, secondary auditory programs, or other effective methods of making visually delivered materials available to residents with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

##### **6. Reasonable Accommodations**

For purposes of these standards, “accommodation” or “reasonable accommodation” means any change or adjustment in Center operations, any modification to Center policy, practice, or procedure, or any provision of an aid or service that permits a resident with a disability to participate in the Center’s programs, services, activities, or requirements, or to enjoy the benefits and privileges of Center programs equal to those enjoyed by residents without disabilities. Examples of “reasonable accommodations” include, but are not limited to, proper medication and medical treatment; accessible housing, toilet, and shower facilities; devices like bed transfer, accessible beds or shower chairs, hearing aids, or canes; and assistance with toileting and hygiene.

When considering requests for reasonable accommodations or modifications, the Center will engage in an interactive and individualized process as outlined in section F below.

For the purposes of this standard, and particularly section F below, reasonable accommodations, disability-related modifications, and auxiliary aids and services are collectively referred to as “accommodations” or “reasonable accommodations.”



#### **4.8 Disability Identification, Assessment, and Accommodation**

### **B. Written Policy and Procedures, and Compliance Manager**

#### **1. Reasonable Accommodation Policy**

The Center will develop written policy and procedures, including reasonable timelines, for reviewing residents' requests for accommodations related to a disability and for providing accommodations (including interim accommodations), modifications, and reassessments. These policies and procedures will be consistent with the processes outlined in this standard.

#### **2. Disability Compliance Manager**

The Center will designate a Disability Compliance Manager to assist Center personnel in ensuring compliance with this standard and all applicable federal, state, and local laws related to accommodation of residents with disabilities. The Disability Compliance Manager may be the Health Services Administrator, a member of the medical staff, or anyone with relevant knowledge, education, and/or experience.

### **C. Identification**

A resident may identify him- or herself (or his or her child) as having a disability and/or request a reasonable accommodation at any point while in residence. Residents may submit a formal or informal (i.e., verbal or written) request for accommodations or assistance to any ICE employee or Center staff member at any time. Requests should be reviewed in context, and do not need to include the words "disability" or "accommodation" to be considered a request for accommodations. The Center will also consider information submitted by a third party, such as an attorney, family member, or other resident identifying a resident with a disability or a resident's need for an accommodation.

Further, it is incumbent upon Center staff to identify residents with impairments that are open, obvious, and apparent. Identification of residents with potential disabilities (i.e., impairments that are open, obvious, and apparent) may occur through medical or intake screenings, or through direct observation. Staff should be particularly vigilant for impairments that affect a resident's mobility or ability to communicate. Upon identifying a resident with a potential disability, the Center will review the need for any necessary accommodations pursuant to Section F below.

The processes described in this standard apply to any resident who has requested an accommodation or auxiliary aid or service, or who has otherwise been identified as potentially needing an accommodation.

### **D. Physical Accessibility and Most Integrated Setting Possible**

#### **1. Physical Accessibility**

The Center will comply with all applicable federal, state, and local laws and regulations related to the accessibility of safe and appropriate housing for residents with disabilities.

The Center will ensure that residents with disabilities are able to physically access its programs, services, and activities. This includes, for example, ensuring residents with disabilities can access telephones, as well as toileting and bathing facilities.

#### **2. Most Integrated Setting**

Every resident with a disability will be housed in a space that affords him or her safe, appropriate

#### **4.8 Disability Identification, Assessment, and Accommodation**

living conditions. Residents with disabilities will be provided access to the Center's programs and services in the least restrictive setting possible and the most integrated setting appropriate to the needs of the resident with a disability.

Residents with disabilities will generally be permitted to keep assistive devices (including such aids as canes and crutches) with them at all times while in residence. Placement apart from other residents due to security concerns related to the use of any such item must be based on individualized review, and the justification for the placement must be documented, whenever the resident is placed apart from others. The justification will set forth the individualized assessment of the safety or security concern created by the assistive device that could not be eliminated or mitigated by modification of policies or procedures.

A resident's disability or need for accommodations may not provide the sole basis for a decision to place him or her apart from the other residents. An individualized assessment must be made in each case, and the justification for the placement documented.

#### **E. Effective Communication**

Throughout the Center's programs and activities, including at all stages of the reasonable accommodation process, the Center must take appropriate steps to allow for effective communication with residents with disabilities to afford them an equal opportunity to participate in, and enjoy the benefits of, the Center's programs and activities. Steps to ensure effective communication may include the provision and use of auxiliary aids or services for residents with vision, hearing, sensory, speech, and manual impairments, as needed. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual resident, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids or services are necessary, the Center will give primary consideration to the request of the resident with a disability.

Use of other residents to interpret or facilitate communication with a resident with a disability may only occur in emergencies.

#### **F. Reasonable Accommodations Process**

The Center's process to appropriately accommodate a resident with a disability will differ depending on the nature of the impairment or disability being addressed. However, in certain cases, the Center administrator or designee will automatically convene a multidisciplinary team, as described in section 4 below.

##### **1. Immediate Accommodations**

The Center will provide residents with disabilities with necessary accommodations in an expeditious manner. In many situations, the Center will be able to immediately grant a resident's request for an accommodation. Where a request for accommodation is immediately granted and provided, and the accommodation fully addresses the resident's ability to access the Center's programs and activities, the Center's response will not ordinarily involve referral to a multidisciplinary team.

#### **4.8 Disability Identification, Assessment, and Accommodation**

##### **2. Medical and Mental Health Treatment**

Many residents with disabilities will receive medical and/or mental health treatment from the Center's clinical medical authority. Where a resident with a disability is fully able to access the Center's programs and activities through the provision of appropriate medical or mental health treatment, further interactive process may not be necessary. However, where the provision of accommodations depends on medical expenditures requiring ICE authorization, the Center will consider whether there are any interim accommodations that would afford the resident access to its programs and activities pending ICE authorization (for example, providing a wheelchair as an interim accommodation to allow for mobility while a prosthesis is repaired), and will provide to the resident any such interim accommodations it identifies.

##### **3. Residents with Cognitive, Intellectual, or Developmental Disabilities**

Referral to the multidisciplinary team may be appropriate for residents who are identified as having a cognitive, intellectual, or developmental disability, including a traumatic brain injury. Such residents may face difficulties navigating a residential environment, including staff-resident communication, behavior management, grievance, and other processes. Additionally, such residents may not understand the process for requesting an accommodation or be aware of limitations on their access to Center programs. Center staff should not require the resident's participation in the assessment process, and should be sensitive to the fact that some residents in this category may not perceive themselves as having a disability. However, Center staff should provide appropriate assistance to a resident with a cognitive, intellectual, or developmental disability, even if not explicitly requested (for example, reading and explaining a form to a resident with limited cognitive abilities). The Center is also required to report the identification of residents with any cognitive, intellectual, or developmental disabilities to the ICE/ERO Field Office and JFRMU Chief.

##### **4. Multidisciplinary Team**

Requests or referrals that require an evaluation by a multidisciplinary team include:

- Residents with mobility impairments;
- Residents with communication impairments;
- Residents whose initial requests for accommodations or assistance have been denied;
- Residents who have filed grievances about the accommodation of their disabilities or impairments;
- Residents whose requests are complex or best addressed by staff from more than one discipline (e.g., security, programming, medical, or mental health, etc.); and
- Residents whose cases are otherwise determined by Center staff to be appropriate for referral to the team.

The multidisciplinary team will include a healthcare professional and any additional Center staff with requisite knowledge of and/or responsibility for compliance with disability policies and procedures. The team may consist of two or more staff and may have different members at different times, depending on the resident or request for accommodations under review. When appropriate, the multidisciplinary team will consult with ICE/ERO and JFRMU to obtain guidance, information, and/or resources for providing accommodations.

#### **4.8 Disability Identification, Assessment, and Accommodation**

The team is encouraged to consult with local and community resources that may have subject matter expertise on the provision of accommodations, modifications, and services. This consultation may include training, information on the availability of accommodations and services, and best practices. However, all external communications regarding individual residents are subject to applicable privacy limitations and protections and must be conducted in a manner consistent with the Privacy Act.

**Interaction with the Resident.** Given the importance of considering information from the resident, the multidisciplinary team will make a good faith attempt to interview the resident and determine the nature of the resident's disability, any difficulties the resident experiences in accessing the Center or its programs or services, and the resident's specific requests or needs for accommodation, if any. The multidisciplinary team will respect any resident's decision to decline to participate in the accommodation process, including the invitation to interview with the multidisciplinary team. If a resident declines such an invitation, the multidisciplinary team will document this declination.

**Multidisciplinary Team Determinations.** The multidisciplinary team will determine whether the resident has a disability, whether the resident requires an accommodation to meaningfully access the Center's programs and activities, and whether to grant or recommend denying the requested accommodation (if any) or propose an alternate, equally effective accommodation. The multidisciplinary team will issue a written decision, including the documentation outlined below, within five (5) working days of the request or referral.

If there is a delay in determining whether to approve an accommodation request or in providing the resident with an approved accommodation, the multidisciplinary team will consider whether there are any interim accommodations that would afford the resident access to Center programs and activities pending the final disposition of the request or the provision of approved accommodations. The Center will provide to the resident any such interim accommodations it identifies.

Where the multidisciplinary team approves a request for an accommodation, but the recommended accommodation requires approval from ICE (i.e., expenditures on medical treatment, medication, and durable medical equipment that require IHSC authorization), the team will inform the resident of the decision and the status of the request with ICE and will consider whether to provide an interim accommodation. The Center will provide to the resident any such interim accommodations it identifies.

Where the multidisciplinary team approves a request for accommodations, and can immediately provide the necessary accommodation, that decision will be the final Center determination, and the team will follow the notification procedures outlined below and implement the approved accommodations as quickly as possible.

**Final Review of Any Denial by Center Administrator or Assistant Center Administrator.** Any denial by the multidisciplinary team of a request for accommodation related to a disability must be approved by the Center administrator or assistant Center administrator. Such denials include all cases in which the multidisciplinary team determines that accommodations, including all requested accommodations, should be denied; or that alternate unrequested

#### 4.8 Disability Identification, Assessment, and Accommodation

accommodation(s) should be provided. The Center administrator or assistant Center administrator will complete his or her review of the multidisciplinary team's decision within three (3) working days of the team decision.

**Resident Notification.** The Center will provide the resident with written notification of the final decision on his or her request for accommodation, regardless of whether an accommodation was granted or denied, and regardless of whether the accommodation requires further approval by ICE. Notification that an approved accommodation request has been granted or submitted to ICE will be provided at the conclusion of the multidisciplinary team review. Notification of a denied accommodation, or provision of an alternate, unrequested accommodation, will be provided only after review and concurrence by the Center administrator or assistant Center administrator, and will include a justification for the denial. Notification will be provided in a language or manner the resident can understand.

**Staff Notification.** Where an accommodation is granted, Center policy or procedures will ensure that all relevant Center staff receive timely notification and, as needed, instructions for successful implementation of the accommodation. These procedures will also account for any applicable privacy and confidentiality considerations.

**Initial and Periodic Reassessments.** An initial re-assessment of approved accommodations must be completed within 30 days of the original assessment by the multidisciplinary team. All reassessments will include a good faith attempt to interview the resident regarding the current accommodations provided and the need, if any, for changes to the resident's accommodation plan.

Subsequent periodic reassessments of approved accommodations will take place at a minimum every 90 days thereafter, unless requested sooner by the resident. Such reassessments should evaluate the efficacy of the accommodation(s) provided, the continued need for accommodation and whether alternate accommodation(s) would be more effective or appropriate. Initial and periodic reassessments will be documented in the resident's medical and/or Center file.

**Documentation.** After the Center has completed its review of a resident with a disability or of a request for an accommodation, Center staff will place written documentation of the following in the resident's medical and/or Center file, as appropriate:

- Date of the initial assessment interview with the resident with a potential disability, along with the name(s) and title(s) of any/all Center staff in attendance;
- Summary of the resident's request, if any, including any specific accommodations requested, and any information or observations related to the resident's disability;
- Findings on whether the resident has a disability and how the disability or impairment limits the resident's ability to access programs or activities while in residence;
- Center's final decision on any requested accommodations;

#### **4.8 Disability Identification, Assessment, and Accommodation**

- Provision of any aids or services to the resident, including the specific type(s) of accommodation provided and/or steps taken by the Center, and the implementation date(s);
- A copy of any written notification provided to the resident, including the justification in the case of a denial; and
- Results and date(s) of any reassessment(s), if applicable, including reasons for any decisions made.

#### **G. Denial of an Accommodation**

Permissible reasons for the Center to deny an accommodation to a resident who has been determined to have a disability include:

- The resident is not denied access to the Center's programs or activities because of a disability;
- There is not a nexus between the disability and the requested accommodation;
- The requested accommodation would fundamentally alter the nature of the program, service, or activity;
- The requested accommodation would result in an undue financial and administrative burden; or
- The resident poses a direct threat to staff or other residents.

Both "fundamental alteration" and "undue financial and administrative burden" are generally high standards that are difficult to meet. Further, if a particular accommodation would result in an undue financial and administrative burden or fundamental alteration, the Center must take any other action that would not result in such an undue burden or fundamental alteration but would nevertheless ensure that, to the maximum extent possible, residents with a disability receive the benefits and services of the program or activity. Similarly, determinations that individuals pose a "direct threat" are generally very rare, and require a careful, individualized assessment as described below.

##### **1. Fundamental Alteration**

A "fundamental alteration" to a Center's programs, services, or activities is a change that is so significant that it alters the essential nature of the program, service, or activity offered. Whether a change constitutes a fundamental alteration is a determination that must be made on a case-by-case basis, and that must consider the unique characteristics of each Center and each resident with a disability.

##### **2. Undue Financial and Administrative Burden**

An "undue financial and administrative burden" is a significant difficulty or expense related to a Center's operations, programs, or activities. In evaluating whether a particular accommodation would result in an undue burden, the Center must consider all resources available for use in the funding and operation of the conducted program or activity *as a whole*.



#### **4.8 Disability Identification, Assessment, and Accommodation**

### **3. Direct Threat**

The Center may justify the denial of an accommodation to a resident with a disability on the basis of the resident posing a direct threat to staff or other residents only if providing the accommodation would unavoidably exacerbate the threat. The determination that a resident with a disability poses such a direct threat to staff or other residents must be reached through an individualized assessment by a multidisciplinary team. The assessment must rely on reasonable judgment and current medical evidence, or the best available objective evidence, to determine the nature, duration, and severity of the risk, and whether any modifications of policies, practices, or procedures can mitigate or eliminate the risk. Residents who are found to pose a direct threat are nevertheless entitled to auxiliary aids or services to allow for effective communication.

## **H. External Notifications**

### **1. Notification of a Resident with a Communication or Mobility Impairment**

The Center will notify the Field Office Director and JFRMU Chief as soon as practicable, but no later than 72 hours, after the multidisciplinary team has completed its review of the needs of any resident with a communication or mobility impairment. This notification must include, at a minimum:

- the nature of the resident's disability or impairment;
- the accommodation requested by the resident; and
- the Center's plan to accommodate the resident.

### **2. Notification of Center Denials and Provision of Alternative Accommodations**

The Center will notify the Field Office Director and JFRMU Chief in writing within 72 hours of any final denial by the Center administrator or assistant Center administrator of any accommodations request reviewed by the multidisciplinary team. This notification must include, at a minimum:

- the nature of the resident's disability;
- the accommodation requested by the resident;
- the reason for denial; and
- any steps the Center has taken to address the resident's needs, including any alternative accommodations provided.

ICE may review the Center's denial of a request for an accommodation. The Center will provide additional information as needed to further ICE's review, and will cooperate with ICE on any additional steps that may be necessary.

## **I. Staff Training**

Training on the Center's Disability and Reasonable Accommodations procedures will be provided to employees, volunteers, and contract personnel, and will also be included in annual refresher training thereafter. New Center staff, including contractors and volunteers, will receive this training as part of the Initial Orientation training required by the ICE Family Residential Standard on *Staff Training*. The level and type of training for volunteers and contractors will be based on the services they provide and their level of contact with residents; however, all volunteers and contractors who



#### 4.8 Disability Identification, Assessment, and Accommodation

have any contact with residents must be notified of the Center's disability accommodations policy.

*Appendix 4.8.A: Resources* following this standard lists resources available from the U.S. Department of Justice and organizations that may be useful in developing a training program, and/or for direct use in training.

#### J. Resident Orientation

The Center orientation program required by the ICE Family Residential Standard on *Admission and Release*, and the resident handbook and local supplement (if applicable) required by the ICE Family Residential Standard on *Resident Handbook*, will notify and inform residents about the Center's disability accommodations policy, including their right to request reasonable accommodations and how to make such a request. The Center will post other documents for resident awareness in the resident information center, living areas, and in the medical unit, as requested by the local ICE/ERO Field Office and/or JFRMU.

### References

- ICE Family Residential Standard on Transportation (by Land)
- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Sexual Abuse and Assault Prevention and Intervention
- ICE Family Residential Standard on Staff-Resident Communication
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Personal Hygiene
- ICE Family Residential Standard on Trips for Non-Medical Emergencies
- ICE Family Residential Standard on Recreation
- ICE Family Residential Standard on Religious Practices
- ICE Family Residential Standard on Telephone Access
- ICE Family Residential Standard on Voluntary Work Program
- ICE Family Residential Standard on Grievance System
- ICE Family Residential Standard on Staff Training
- Title II of the Americans with Disabilities Act of 1990, as amended, and its implementing regulation at 28 C.F.R. Part 35.
- The Architectural Barriers Act of 1968, as amended.
- Section 504 of the Rehabilitation Act of 1973, and DHS implementing regulation at 6 C.F.R. Part 15.

#### 4.8 Disability Identification, Assessment, and Accommodation

- DHS Directive 065-01, “Nondiscrimination for Individuals with Disabilities in DHS-conducted Programs and Activities (Non-Employment)” (Sept. 25, 2013).
- ICE Directive “Assessment and Accommodations for Detainees with Disabilities” (December 15, 2016).

### Appendix 4.8.A: Resources

*Note: This appendix is not, and should not be interpreted as, legal advice. This appendix is intended only as a reference. The materials referenced herein are non-exhaustive, and Centers are responsible for determining whether and how any additional laws apply.*

#### Applicable Federal Laws and Regulations

##### Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504)

Section 504 prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors. Section 504 requires that no individual with a disability may be denied the opportunity to participate in a program, service, or activity solely by reason of a disability. The Center is required to provide reasonable modifications to provide individuals with disabilities with an equal opportunity to access, participate in, or benefit from the Center’s programs, services, and activities. When considering what reasonable modifications to provide, the Center will engage in an interactive and individualized process that considers the individual’s needs and gives primary consideration to the preferences of the individual with a disability.

DHS’ Section 504 implementing regulations: 6 C.F.R. Part 15

Link to DHS’ Section 504 regulations: <https://www.gpo.gov/fdsys/pkg/CFR-2004-title6-vol1/pdf/CFR-2004-title6-vol1-part15.pdf>

##### Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et seq. (ABA)

The ABA requires that buildings and facilities that are designed, constructed, or altered with Federal funds, or leased by a Federal agency, comply with Federal standards for physical accessibility. ABA requirements are limited to architectural standards in new and altered buildings and in newly leased facilities. They do not address the activities conducted in those buildings and facilities.

Implementing Regulations: 41 CFR Subpart 101-19.6

Link to the ABA: <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards>

#### 4.8 Disability Identification, Assessment, and Accommodation

### U.S. Department of Homeland Security (DHS) Resources

#### Directive No. 065-01: Nondiscrimination for Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-Employment)

This Directive establishes the DHS policy and implementation mechanisms for ensuring nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities under Section 504.

[https://www.dhs.gov/sites/default/files/publications/dhs-management-directive-disability-access\\_0\\_1.pdf](https://www.dhs.gov/sites/default/files/publications/dhs-management-directive-disability-access_0_1.pdf)

#### Directive 065-01-001: Instruction on Nondiscrimination for Individuals with a Disability in DHS-Conducted Programs and Activities (Non-Employment)

This Instruction implements the DHS Directive 065-01, Nondiscrimination for Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-Employment).

[https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities\\_03-07-15.pdf](https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities_03-07-15.pdf)

#### A Guide to Interacting with People who Have Disabilities:

The DHS Office for Civil Rights and Civil Liberties developed this Guide to assist DHS personnel, contractors, and grantees in their interactions with people who have disabilities. Under Section 504, DHS has a legal obligation to ensure nondiscrimination in the employment of people with disabilities as well as by providing program access, physical access, effective communication, and reasonable accommodation to people with disabilities encountered and served by DHS programs and activities. Examples of these interactions include residents with disabilities who are in ICE custody awaiting a hearing or removal; this also includes individuals with disabilities who are members of the public, a family member, friend and/or attorney of a resident who seek to access ICE programs, services and activities. Ensuring nondiscrimination often begins by practicing effective methods for interaction, such as treating individuals with respect and using appropriate language. This Guide offers a summary of disability myths and facts, guidance on appropriate language, and tips for successfully interacting with people who have disabilities. It is intended as a general overview of the topic and does not supplant any specific policies and procedures used by the DHS Components.

[https://www.dhs.gov/sites/default/files/publications/guide-interacting-with-people-who-have-disabilities\\_09-26-13.pdf](https://www.dhs.gov/sites/default/files/publications/guide-interacting-with-people-who-have-disabilities_09-26-13.pdf)

### Other Federal Government Resources

**Disability.gov:** [www.disability.gov](http://www.disability.gov)

Disability.gov is the U.S. federal government website for comprehensive information about disability-related programs, services, policies, laws and regulations nationwide. The site links to thousands of resources from many different federal government agencies, as well as state and local governments and nonprofit organizations across the country. New resources are frequently added to Disability.gov's 10 main subject areas: Benefits, Civil Rights,

#### **4.8 Disability Identification, Assessment, and Accommodation**

Community Life, Education, Emergency Preparedness, Employment, Health, Housing, Technology and Transportation.

**U.S. Department of Justice, Disability Rights Section:** [www.ada.gov](http://www.ada.gov)

ADA.gov is a website operated by the Disability Rights Section in the Civil Rights Division of the U.S. Department of Justice (DOJ) to continuously provide new and updated information and guidance on the Americans with Disabilities Act (ADA) and its requirements. DOJ also operates a toll-free information line for those seeking to comply with the ADA: (800) 514-0301 for voice calls; or (800) 514-0383 for TTY. [Note: The ADA does not apply to ICE's programs and activities. However, ada.gov provides helpful disability-related technical assistance materials on various subjects.]

**The U.S. Access Board:** [www.access-board.gov](http://www.access-board.gov)

The U.S. Access Board is an independent federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards for the built environment, transportation, communication, medical diagnostic equipment, and information technology. The Board develops and maintains design criteria for the built environment, transit vehicles, telecommunications equipment, medical diagnostic equipment, and information technology. The Board also provides technical assistance and training on these requirements and on accessible design and continues to enforce accessibility standards that cover federally funded centers. The Board's Section 508 Standards apply to electronic and information technology procured by the federal government, including computer hardware and software, websites, phone systems, and copiers. They were issued under section 508 of the Rehabilitation Act which requires access for both members of the public and federal employees to such technologies when developed, procured, maintained, or used by federal agencies. The Board operates a toll-free-line: (800) 872-2253 or TTY (800) 993-2822.

# 5.1 Correspondence and Other Mail

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents will be able to correspond with their families, the community, legal representatives, government offices, and consular officials in a manner that is consistent with the safe and secure Center operations.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents will be able to correspond with their families, the community, legal representatives, government offices, and consular officials.
2. Centers will advise residents of correspondence and other mail rules at admission and through the resident handbook and local supplement (as appropriate), provided to each resident.
3. Centers will provide a system for residents to receive and send electronic messages (email).
4. The amount and content of correspondence residents send at their own expense will not be limited, except to protect public safety or safe and secure Center operations.
5. Indigent residents will receive a specified postage allowance to maintain community ties and necessary postage for special correspondence.
6. Residents will have access to general interest publications.

## 5.1 Correspondence and Other Mail

7. Incoming and outgoing mail, with the exception of special correspondence or legal mail, will be opened in the presence of the resident to inspect for contraband and to intercept cash, checks, and money orders.
8. General correspondence will not be read or rejected, except if needed to maintain safe and secure Center operations; residents will be notified in writing in a language or manner they understand when correspondence is withheld in part or in full.
9. Residents will be permitted to send special correspondence or legal mail to a specified class of persons and organizations. Unless contamination is suspected, staff will open incoming mail from these persons only in the presence of the residents (unless waived).
10. Incoming and outgoing letters will be held for no more than 24 hours and packages no more than 48 hours before distribution, excluding weekends, holidays, or exceptional circumstances.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Correspondence and Other Mail* dated 12/21/2007.

## Expected Practices

### A. General

Each Center will have written policy and procedures concerning resident correspondence and other mail. This information will be provided at admission and in the resident handbook and local supplement, as appropriate.

Centers will not limit the amount of correspondence residents may send at their own expense, except in matters of public safety and safe and secure Center operations. Centers will not limit residents to postcards and will allow envelope mailings. However, non-correspondence mail (such as packages and publications) may be subject to certain restrictions because of public safety and safe and secure Center operations.

“Special correspondence” is defined as correspondence to or from attorneys and other legal representatives, judges, courts, foreign governments, the President and Vice President of the United States, members of Congress, the Department of Justice (DOJ), U.S. Department of Homeland Security (DHS), the U.S. Public Health Service, outside health care professionals, organizations that accept resident grievances, and news media representatives. Correspondence will be treated as special correspondence only if the title and office of the sender (for incoming correspondence) or addressee (for outgoing correspondence) are identified unambiguously on the envelope, and the envelope is labeled as “SPECIAL CORRESPONDENCE.”

### B. Indigent Residents

Ordinarily, a resident is considered “indigent” if he/she has fewer than \$15 in his/her account. Centers will make a timely determination as to whether a resident is indigent.

### 5.1 Correspondence and Other Mail

Each Center will have written procedures that explain how indigent residents can request postage at government expense. Such procedures also will be posted in the Resident Information Center where all residents can view them.

Indigent residents will be permitted to mail at government expense:

- A reasonable amount of general correspondence mail each week;
- An unlimited amount of correspondence related to a legal matter, including correspondence to a legal representative, free legal service provider, any court, or opposing counsel; or to a consulate, potential legal representative, and any court, as determined by the Center Administrator; and
- Packages containing personal property, when the Center Administrator determines that storage space is limited and that mailing the property is in the government's best interest. See the ICE Family Residential Standard on *Funds and Personal Property* for additional information.

### C. Resident Notification

The Center will notify residents of its rules on correspondence and other mail through the resident handbook and local supplement (as appropriate), provided to each resident upon admission. At a minimum, the notification will specify:

- That a resident may send mail, the procedure for sending written or electronic mail, and instructions on how outgoing mail must be addressed;
- That a resident may receive mail, the mailing address of the Center, and instructions on how envelopes will be addressed;
- That general correspondence and other mail addressed to residents will be opened and inspected in the resident's presence, unless waived by the resident or the Center Administrator, in consultation with local ICE/Enforcement and Removal Operations (ERO) staff and the Juvenile and Family Residential Management Unit (JFRMU) Onsite Coordinator, authorizes, for security reasons, inspection without the resident's presence;
- The definition of special correspondence or legal mail, including instructions on the proper labeling as "SPECIAL CORRESPONDENCE" or "LEGAL MAIL" to ensure that it is treated as privileged mail;
- That if not properly labeled, correspondence will not be treated as special correspondence. The notification will state clearly that it is the resident's responsibility to inform senders of the labeling requirement;
- That incoming special correspondence or legal mail may be opened only in the resident's presence (unless waived), and may be inspected for contraband, but not read; outgoing special correspondence or legal mail will not be opened, inspected, or read;
- That packages may neither be sent nor received without advance arrangements approved by the Center Administrator, as well as information regarding how to obtain such approval;



## **5.1 Correspondence and Other Mail**

- A description of mail that may be rejected by the Center (e.g., explosive manufacturing information) and that the resident will not be permitted to keep in his/her possession (e.g., clothing not in accordance with the Center dress code);
- The procedure to obtain writing implements, paper, and envelopes; and
- The procedure for purchasing postage (if any), and the rules for providing indigent and certain other residents free postage.

The rules notification will be posted in each living and activity area.

### **D. Mail Processing**

Resident correspondence and other mail will be delivered to the resident and to the postal service on regular schedules.

Incoming correspondence will be distributed to residents within 24 hours (one business day) of receipt by the Center.

Outgoing correspondence will be delivered to the postal service no later than the day after it is received by Center staff or placed by the resident in a designated mail depository, excluding weekends and holidays.

An exception may be made for correspondence or other mail that requires special handling for security purposes. For example, in exceptional circumstances, special correspondence may be held for 48 hours, to verify the status of the addressee or sender.

As a routine matter, incoming mail will be distributed to residents on the day received by the Center. Incoming priority, overnight, and certified mail and deliveries from a private package delivery service, etc., will be recorded with resident signatures in a logbook maintained by the Center.

### **E. Packages**

Each Center will implement policies and procedures concerning resident packages.

Residents will not be allowed to receive or send packages without advance arrangements approved by the Center Administrator. The resident will pay postage for packages and oversized or overweight mail.

### **F. Inspection of Incoming Correspondence and Other Mail**

#### **1. General Correspondence and Other Mail**

All Centers will implement inspection procedures for all incoming general correspondence and other mail (including packages and publications) for contraband.

Staff will open and inspect incoming general correspondence and other mail (including packages and publications) in the presence of the resident unless waived by the resident or otherwise authorized by the Center Administrator. Incoming general correspondence may be read to the extent necessary to maintain safe and secure Center operations, as authorized by the Center Administrator, in consultation with the JFRMU Onsite Coordinator.

## **5.1 Correspondence and Other Mail**

Inspection generally is for the purpose of detecting contraband. Reading mail and email, which requires approval of the Center Administrator, may be done at random. Mail and email also may be read when a specific security concern arises with respect to an individual resident, including, but not limited to, obtaining information such as plans to commit illegal acts and plans to violate Center rules.

### **2. Special Correspondence or Legal Mail**

Residents' written communications to or from any of the following will be labeled "special correspondence" or "legal mail":

- Private attorneys and other legal representatives;
- Government attorneys;
- Judges and courts;
- Embassies and consulates;
- The President and Vice President of the United States;
- Members of Congress;
- DOJ (including the DOJ Office of the Inspector General [OIG]);
- DHS (including ICE, ICE Health Services Corps, ERO, the DHS Office for Civil Rights and Civil Liberties, and the DHS/OIG);
- Outside health care professionals;
- Administrators of grievance systems; and
- Representatives of the news media.

Correspondence will be treated as special correspondence or legal mail only if the title and office of the sender (for incoming correspondence) or addressee (for outgoing correspondence) are identified unambiguously on the envelope, and the envelope is labeled "SPECIAL CORRESPONDENCE" or "LEGAL MAIL."

All Centers will implement procedures for inspecting for contraband and, in the presence of the resident, all special correspondence or legal mail. Residents will sign a logbook upon receipt of special correspondence and/or legal mail to verify that the special correspondence or legal mail was opened in their presence.

Staff will neither read nor copy special correspondence or legal mail. The inspection will be limited to the purposes of detecting physical contraband and confirming that any enclosures qualify as special correspondence or legal mail.

## **G. Inspection of Outgoing Correspondence and Other Mail**

### **1. General Correspondence and Other Mail**

Outgoing general correspondence and other mail may be inspected or read if:

- The addressee is another resident; or

## 5.1 Correspondence and Other Mail

- There is evidence the item might present a threat to safe and secure Center operations, endanger the recipient or the public, or facilitate criminal activity.

The resident must be present when the correspondence or other mail, including packages, is inspected, unless otherwise authorized by the Center Administrator.

### 2. Special Correspondence or Legal Mail

Centers will implement procedures for inspecting outgoing special correspondence for contraband in the presence of the resident. Staff will neither read nor copy outgoing special correspondence or legal mail. The inspection will be limited to the purposes of detecting physical contraband and confirming that any enclosures qualify as special correspondence or legal mail.

Staff will treat outgoing correspondence as special correspondence or legal mail only if the name, title, and office of the recipient are identified clearly on the envelope and the envelope is labeled "SPECIAL CORRESPONDENCE" or "LEGAL MAIL."

## H. Rejection of Incoming and Outgoing Mail

All Centers will implement policies and procedures addressing acceptable and non-acceptable mail. Residents may receive as correspondence any material reasonably necessary for the resident to present his/her legal claim, in accordance with this standard. Correspondence and publications may be rejected in accordance with the ICE Family Residential Standard on *Contraband*.

Residents have a reasonable right to privacy which shall include receiving and sending uncensored mail unless there is a reasonable belief that the mail contains contraband. Incoming and outgoing general correspondence and other mail may be rejected to ensure safe and secure Center operations; to protect the public; or to deter criminal activity.

When incoming or outgoing mail is confiscated or withheld (in whole or in part), the resident will be notified and given a receipt.

Packages received that do not conform to the Center's package procedures will be rejected.

The Center Administrator ordinarily will consult a religious authority before confiscation of a religious item that constitutes "soft" contraband.

Correspondence and publications that may be rejected include, but are not limited to, the following:

- Material depicting activities that present a significant risk of physical violence or group disruption (e.g., material with subjects of self-defense or survival, weaponry, armaments, explosives, or incendiary devices); however, note that newspaper articles that depict or describe violence in a resident's country of origin may be relevant to a resident's legal case and should not be considered contraband automatically;
- Information regarding plans to commit illegal activities, or plans to violate ICE/ERO rules or Center guidelines;
- Information regarding the production of drugs or alcohol;
- Sexually explicit material that is obscene or indecent in nature;

## 5.1 Correspondence and Other Mail

- Threats, extortion, obscenity, or gratuitous profanity;
- Cryptographic or other surreptitious code that may be used as a form of communication; or
- Other contraband (any package received without the Center Administrator's prior authorization is considered contraband).

Both sender and addressee will be provided written notice, signed by the Center Administrator, with explanation when the Center rejects incoming or outgoing mail. Rejected mail will be considered contraband and handled as detailed in the next section of this standard.

A resident may appeal rejection of correspondence through the resident grievance process.

### I. Contraband Recording and Handling

When a staff member finds an item that must be removed from a resident's mail, he/she will make a written record that includes:

- The resident's name and alien number;
- The name of the sender and recipient;
- A description of the contraband in question;
- A description of the action taken and the reason for it;
- The disposition of the item and the date of disposition; and
- The staff member's signature.

Prohibited items discovered in the mail will be handled as follows:

- A receipt will be issued to the resident for all cash, which will be safeguarded and credited to the resident's account in accordance with the ICE Family Residential Standard on *Funds and Personal Property*;
- Original identity documents (e.g., passports, birth certificates) will be placed in the resident's alien file; upon request, the resident will be provided with a copy of the document that is certified by an ICE/ERO staff member to be a true and correct copy;
- Other prohibited items found in the mail will be handled in accordance with ICE Family Residential Standard on *Contraband*; however, at the discretion of the Center Administrator, soft contraband may be returned to the sender; and
- The Center Administrator will ensure that Center records of the discovery and disposition of contraband are accurate and current.

### J. Postage Costs

The Center will not limit the amount of correspondence residents may send at their own expense, except to protect public safety or safe and secure Center operations.

The Center will provide a postage allowance at government expense under two circumstances:

- To indigent residents only; or

## **5.1 Correspondence and Other Mail**

- To all residents, if the Center does not have a system for residents to purchase stamps.

Free postage generally is limited to letters weighing one ounce or less, with exceptions allowed for special correspondence; however, in compelling circumstances, the Center also may provide free postage for general correspondence and other mail.

### **K. Writing Implements, Paper, and Envelopes**

The Center will provide writing paper, writing implements, and standard-sized envelopes at no cost to residents. Special-sized envelopes may be provided to residents at their cost.

### **L. Correspondence with Representative of the News Media**

A resident may use special correspondence to communicate with representatives of the news media.

A resident may not receive compensation or anything of value for correspondence with news media. A resident may not act as a reporter.

Representatives of the news media may initiate correspondence with a resident; however, such correspondence will be treated as special correspondence only if the envelope is addressed properly with the name, title, and office of the media representative and is clearly labeled "SPECIAL CORRESPONDENCE."

### **M. Electronic Mail (email) and other Electronic Correspondence**

When timely communication through postal mail is not possible, the Center Administrator may in his/her discretion allow for a reasonable amount of communication by means of a facsimile device between the resident and his/her designated legal representatives.

Additionally, Centers will provide access to an Internet connection that residents may use to send and receive email, use instant messaging, and send and receive PDFs and/or other scanned documents that are sent electronically.

Centers will implement filters to block inappropriate websites.

Residents will be notified if email or other electronic correspondence will be monitored.

### **N. Notaries, Certified Mail, and Miscellaneous Needs Associated With Legal Matters**

If an indigent resident without legal representation requests certain services in connection with a legal matter, such as notary public or certified mail, then the Center will provide notary public and certified mail services as needed. Indigent residents will be provided these services free of charge. Centers will not deny any request without prior authorization from the JFRMU Onsite Coordinator.

If it is unclear whether the requested service is necessary in pursuit of a legal matter, then the Office of the Principal Legal Advisor will be consulted.

## **5.1 Correspondence and Other Mail**

### **References**

- ICE Family Residential Standard on Contraband
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Handbook

## 5.2 Educational Policy

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that Centers provide appropriate education for all residents 4 to 17 years of age, regardless of English proficiency or disability.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Eligible minors (4-17 years old) will receive an initial educational assessment within three business days of their arrival at the Center.
2. Centers will provide eligible minors with a minimum of one-hour instruction daily in each of the core subjects, Monday through Friday (except Federal/state holidays), on a year-round schedule, in compliance with State and local requirements.
3. All teaching staff will be qualified (i.e., certified) to teach in accordance with State licensing requirements.
4. All curricula and associated texts and learning materials will comply with applicable State requirements.
5. Comprehensive education files will be maintained for each student.



**5.2 Educational Policy**

6. Centers will develop and maintain formal relationships with local education agencies and other organizations (per State and local regulations) as appropriate to ensure timely and appropriate delivery of services
7. All children with disabilities and/or children in need of special education and related services will be identified and referred to the appropriate Local Educational Agency for evaluation and intervention as appropriate.
8. For cases that are referred to the Local Educational Agency, Centers will convene a special education team (SET), consisting of multidisciplinary staff trained in subjects such as education, medical and mental health, administration, social work, and physical education. The team will develop recommendations for a 504 plan as appropriate pending the outcome of the Local Educational Agency's evaluation. A 504 plan will provide support and remove barriers for a student with a disability and must detail services and changes to the learning environment to enable students to learn alongside their peers.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Educational Policy* dated 12/21/2007.

## Expected Practices

### A. Guidelines

Centers will either establish or contract to provide an education unit in order to offer comprehensive elementary and secondary educational services and programs to children 5 years of age and older and pre-kindergarten services to children 4 years of age.

Centers will provide age-appropriate child developmental toys and reading materials for all children, readily accessible in living and activity areas.

Educational services will be provided in a structured classroom setting Monday through Friday, excluding Federal, state or local holidays, on a year-round schedule.

Centers will provide students 5 to 17 years of age with a minimum of one-hour instruction daily in each of the following core subjects: science, social studies, math, English language arts, and physical education.

Education staff working in classrooms will be certified as English as a Second Language (ESL) instructors, or actively enrolled in an ESL certification program with a targeted completion date. Education staff working in classrooms will be ESL certified or enrolled in an ESL program with a targeted completion date. If required by State regulations, teachers will be bilingual in a language spoken by Center residents

Each student will be administered an initial educational and special needs assessment within three business days of arrival at the Center. If special needs are identified, the education coordinator will notify the parent/guardian, Center Administrator, Field Office Director (FOD), Juvenile and Family

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Residential Management Unit (JFRMU) Chief, and Health Services Administrator. The Center will refer these students for services as appropriate.

Core subject assessments will be administered monthly so that individual student progress may be tracked over time. Copies of all assessments will be placed in the student's educational file.

A student code of conduct, approved by the education administrator, will be provided to staff, students, and their families. The student code of conduct will be posted in the educational area.

Educational field trips will be provided for knowledge reinforcement. Field trips may occur either on- or off-site.

Centers will comply with all applicable provisions of the Individuals with Disabilities Education Act (IDEA), Pub. L. 101-476 (Oct. 30, 1990), Section 504 of the Rehabilitation Act of 1973, and any other relevant Federal and state laws, including by providing access to therapists, equipment, classroom placement, modifications, development of plans, etc., for children with disabilities.

**B. Initial Individual Needs Assessments**

Assessment tools will be administered in accordance with State and local requirements, will be universally applied to all eligible children, and will use nationally accepted, scientifically valid testing methods.

Assessments will be administered by a State-certified teacher, a teacher in a State-approved certification program, or a staff member otherwise eligible to teach in the relevant State.

All assessments will be conducted in a location and manner that supports the student's privacy. Assessment interviews will be conducted in the student's primary language. Interpreters will be used when the interviewer does not speak the student's primary language. Should an appropriate interpreter not be available, telephonic interpretation services will be utilized. Copies of all initial assessments will be made available to parents/guardians for their review upon request.

**C. Placement**

Students will be assigned to a specific grade or grade cluster based on the results of their initial individual assessments. In cases where the student's age and assessment results differ significantly, the Center SET will determine the student's initial placement. Parents/guardians will be included in this conversation. Parents/guardians may request a SET review/explanation of all placements.

**D. General Education Services**

Educational services will be provided in a structured classroom setting Monday through Friday, excluding holidays, on a year-round schedule. Classroom settings will encourage a positive learning environment and reflect cultural diversity.

Core educational subjects will include: science, social studies, math, English language arts, and physical education. Life skills should be included as feasible and appropriate. Education staff working in classrooms will be certified as English as a Second Language (ESL) instructors, or actively enrolled in an ESL certification program with a targeted completion date. Education staff

**5.2 Educational Policy**

working in classrooms will be ESL certified or enrolled in an ESL program with a targeted completion date. If required by State regulations, teachers will be bilingual in a language spoken by Center residents

Interpretation services, including telephonic interpretation, will be utilized as needed when the student and teacher do not speak the same language.

Educational services will generally be designed to meet the needs of an immigrant student population.

Linguistically appropriate educational materials will be used in the classrooms. Teaching staff will develop lesson plans and curricula based on State-approved model programs. All lesson plans will be approved by the education administrator and be available for review in the classroom.

Educational field trips will be provided for academic related activities involving art, career education, home economics, technical education, mathematics, music, science, social studies, physical education, cultural competency, and interdisciplinary trips. Field trips may occur either on- or off-site. The FOD and JFRMU Chief must approve all proposed field trips and the parent's/guardian's consent must be obtained prior to the child's participation, whether the event occurs on- or off-campus. Such documentation will be kept in the resident file.

Cultural competency and learning will be incorporated into lesson plans, activities, and seminars on a daily basis.

Telephonic interpretation services will be available in each classroom.

**E. Evaluation and Reporting**

Student attendance will be recorded for the morning and afternoon sessions (when conducted), and records of attendance will be maintained and available for review upon request.

Student progress reports will be distributed to all students on a regular and consistent schedule. Parents/guardians will be offered and encouraged to participate in parent/guardian-teacher conferences to discuss student achievement. Conferences will be scheduled as needed.

Students who complete the learning requirements for 12th grade will be provided the opportunity for learning advancement through independent study, special projects GED classes, and college preparatory tutorials, among others.

In accordance with applicable State law, residents may request GED testing. Those residents will be referred to the local educational agency for processing as appropriate. Centers will coordinate testing logistics.

**F. Staffing Requirements and Training**

Education staff working in classrooms will be qualified and certified to teach in accordance with applicable State regulations.

The student/teacher ratio will not exceed the State requirements.

**5.2 Educational Policy**

Education staff working in classrooms will be ESL certified or enrolled in an ESL certification program with a targeted completion date. If required by State regulations, teachers will be bilingual in a language spoken by Center residents.

The education unit will be administered and supervised by a person qualified and trained as an administrator, in accordance with State requirements.

A staff development plan will be administered by the education unit in accordance with prescribed State requirements and will be on file and available for review.

Onsite education staff is provided with initial, ongoing, and annual training in accordance with the ICE Family Residential Standard on *Staff Training* in addition to any State requirements.

**G. Equipment and Supplies**

Classrooms will be equipped with materials that comply with the respective State's educational policy and directives for each of the core subjects excluding physical education, and including any necessary specialized equipment as determined by the local educational agency.

Each child will be issued materials appropriate for classroom use, and education staff will be provided with the instructor's edition as appropriate. Should the State curriculum require additional materials to complete the goals and objectives of a particular course of study, materials will be provided to each student and teacher as needed. If the materials are perishable, they will be replaced on a rotating basis commensurate with the curriculum timeline and rotation of students.

All classrooms will be equipped with the necessary number of computers or tablets based on the lesson plan, Internet access, telephonic interpretation services, and attendance and grading software.

Classrooms will have manipulatives readily available and linguistically and developmentally appropriate to each classroom and as required by the relevant lesson plans and curricula. Students will have the tools necessary to complete a particular task on their own, except when the curriculum calls for a group or partnered activity.

Classrooms will have necessary learning materials to include colored pencils and crayons, writing paper, drawing paper, construction paper, and graph paper as needed and required by curricula tasks and objectives.

**H. Student Educational Files**

Student educational files will be maintained securely in the onsite educational area.

Student educational files will be made available during parent/guardian-teacher conferences.

Student files will contain the following documents, as applicable: all educational assessments, attendance records, progress reports, requests for parent/guardian-teacher conference and follow-up notes, 504 plans, individualized education programs, and follow-up reviews.

Upon departure from the Center, students will receive a memorandum confirming their dates of enrollment. This memorandum also will include contact information for the Center's educational

**5.2 Educational Policy**

unit. Educational assessments and/or transcripts will be provided upon request from the new school.

**I. Special Education Terms**

Certain terms are defined as follows for purposes of interpreting and administering special education:

SET: Special Education Team, a multidisciplinary team, members of which are trained in subjects such as education, medical and mental health, administration, social work, and physical education.

IDEA: Individuals with Disabilities Education Act, as amended, including the Individuals with Disabilities Education Improvement Act of 2004.

IEP: Individualized Education Program established for an eligible student pursuant to IDEA that states the goals, objectives, and services for the student receiving special education.

SEA: State Education Agency.

504 Plan: Individual plan established by the Center that outlines accommodations, modifications, auxiliary aids and services, or other support services necessary to provide a child with a disability with equal access to the Center's educational programs and activities.

**J. Special Education Services**

Centers will provide and coordinate the following special education services. Any such services will be undertaken only with the parent/guardian's informed, written consent, the information for which was provided in the parent/guardian's native language or through another mode of communication he/she can understand. All services will be provided in the least restrictive and most integrated environment appropriate to the needs of children with disabilities:

Parents/guardians, Center staff, ICE/ERO, and/or medical staff may refer a minor for special needs screening at any time.

Special Needs Screening: When identified for special needs screening, the education unit will use standardized screening tools in use by the local educational agency to evaluate potential special needs students. Any student needing further special needs evaluation will be referred to the local educational agency within three business days of identification.

Education staff will develop and implement a public awareness effort that focuses on the early identification of children who are eligible for services. Center staff also will attend training on identifying and assessing children potentially in need of early intervention or special educational services.

- If, during the screening, a student is identified with a possible need for special education services, then the Center immediately will begin the process of placing the child on a 504 plan (as specified in the Special Education Terms section in this standard), to ensure that the Center provides necessary accommodations, modifications, and/or auxiliary aids and services as required

**5.2 Educational Policy**

by Federal law and consistent with the Family Residential Standard on Disability Identification, Assessment, and Accommodations, including support services that assist them in benefitting educationally from the Center's instructional program;

- Within 48 hours of identifying the child's need, Center education staff will communicate any identified needs to the parent/guardian and any Center staff overseeing relevant disciplines, as deemed necessary for the safety and security of all residents and staff;
- If a need for special accommodation is identified, a 504 plan will be completed by the local educational agency and shared with the education staff to ensure services and supports are provided to the child;
- Once a need is identified, the SET will review the 504 plan with the parent/guardian, obtain written consent from the parent/guardian, and implement the plan;
- Education unit staff will immediately implement the requirements of the 504 plan; and
- In the event that accommodations, modifications, or auxiliary aids or services are required pending local educational agency evaluation that cannot be accomplished with the existing education staff, the local educational agency will be contacted to provide additional services.

**1. Individualized Education Program (IEP)**

A meeting must take place to develop an IEP for any child with a special needs screening determination which indicates a child needs special education and related services.

Immediately following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

A SET (special education team) will develop the individualized education program.

A written statement of the individualized education program must document the decisions of the SET with respect to issues discussed at each meeting about a particular child who needs special education services. The written statement must include:

- The date of the meeting;
- The name, position, and signature of each SET member participating in the meeting;
- An indication of whether the child's parent/guardian, and the Center administrator, agreed or disagreed with the decisions of the SET;
- If the individualized education program is not developed by agreement, the written statement of the program must include the basis of the disagreement.

**5.2 Educational Policy**

Each member of the SET who disagrees with the individualized education program developed by the team is entitled to include a statement of disagreement in the written statement of the program;

- If the child's parent/guardian is limited English proficient (LEP), the Center shall provide the parent/guardian with a written or audiotaped copy of the child's individualized education program translated or interpreted into the parent/guardian's primary language;

The SET may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a child.

In developing each IEP, the SET must consider:

- The strengths of the child, the concerns of the parent or guardian, and the results of the most recent evaluation of the child including academic, developmental, and functional needs;
- In a case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- In a case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP;
- In a case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the SET Team determines--after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille)--that instruction in Braille or the use of Braille is not appropriate for the child;
- The communication needs of the child, and in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- Whether the child needs assistive technology devices and services.

**2. Review and revision of IEPs**

Each Center must review the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved.



**5.2 Educational Policy****K. Local Educational Agency Coordination**

The education unit will coordinate with the local educational agency to provide for the education and related services for eligible students while in residence. The following services will be provided:

**Determination of Eligibility for Services and Curriculum:** The education unit will coordinate with the local educational agency to determine whether identified students are eligible to receive educational services under IDEA and/or other applicable State and Federal law.

**Furnishings and Equipment:** Centers will provide the local educational agency with necessary space, furnishings, and equipment including, but not limited to, desks, chairs, or any other furnishings or equipment that the local educational agency deems necessary for the proper delivery of services.

Centers will make available for the local educational agency's use a space for instruction, testing, and/or assessment. Such facilities will be made available for use by the local educational agency according to a mutually agreed upon schedule.

Centers and the education unit will permit the local educational agency's instructional and assessment personnel, and special education team members as required, access to students and their parent(s)/guardian(s).

The local educational agency will be afforded access to students during normal school hours, Monday through Friday, excluding Federal, state and local holidays, on a year-round schedule.

Centers will provide transportation services for those eligible students whose special education needs cannot be met onsite, or when the local educational agency has determined the student would be better served off-site or at a designated local educational agency location.

The education unit will provide designated local educational agency personnel with appropriate student information, including educational records, for purposes of determining eligibility for educational services, to the extent permitted without violating the student's privacy rights.

**Procedures with the local educational agency:** The education unit will ensure that procedural safeguards required by IDEA and other federal law are followed on all matters in which the local educational agency's assistance has been requested, including, but not limited to:

Notifying students and parents/guardians of meetings;

Notifying parents/guardians of procedural safeguards on forms to be provided by the local educational agency and communicated by Center staff in a language or manner the parents/guardians can understand; and

Assisting the local educational agency in obtaining consent from students and parents/guardians for assessment, initial placement, and reevaluation.

**5.2 Educational Policy**

**Classroom Instruction:** The education unit will coordinate with the local educational agency to provide classroom teachers and other personnel necessary to meet the requirements of IDEA and other State and/or Federal requirements applicable to the local educational agency for students who have either a 504 plan or IEP. Such services will be provided as dictated by the conditions of the plan and the requirements of IDEA and other applicable State and Federal law. All special education programming will be provided to the student in a language he/she understands. Information provided to parents/guardians will also be in a language they understand.

**Instructional Materials:** The educational unit will coordinate with the local educational agency to provide books and other instructional and evaluation materials, including computer software, as needed to provide support services sufficient to meet all applicable State and Federal requirements.

**Meeting and Notices:** Upon receipt of notice of all such meetings from the local educational agency, the education unit will notify the student and his or her parent/guardian as soon as practicable. The Center educational staff will coordinate (as appropriate) with the local educational agency to provide a plan for each identified and eligible student and will convene meetings as required to meet the requirements of IDEA and other applicable State and Federal law.

## References

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Staff Training
- ICE Family Residential Standard on Disability Identification, Assessment, and Accommodations
- Individuals with Disabilities Education Act, as amended
- Section 504 of the Rehabilitation Act of 1973

## 5.3 Escorted Trips for Non-medical Emergencies

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents may visit critically ill immediate family members, attend immediate family members' funerals, and participate in family-related state court proceedings, among other things, under certain circumstances through ICE/Enforcement and Removal Operations (ERO) staff-escorted trips.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Within the constraints of safety and security, selected residents will be able to visit critically ill members of their immediate family, attend their funerals, or attend family-related State court proceedings, while under constant staff supervision.
2. Safety and security will be primary considerations in planning, approving, and escorting a resident out of a Center for a non-medical emergency.
3. ICE/ERO will make all travel arrangements; residents will be responsible for payment in full of any commercial travel arrangements before commencing the trip.
4. ICE/ERO will select the escorts and delegate decision-making authority during the trip to one of the escorts.

### 5.3 Escorted Trips for Non-medical Emergencies

5. Escorting staff will maintain constant visual supervision of the resident during the trip and will follow appropriate policies and procedures on transport and/or restraints.
6. Escorting staff will follow all applicable policies and procedures for non-emergency travel.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Escorted Trips for Non-medical Emergencies* dated 12/21/2007.

## Expected Practices

### A. Non-medical Emergency Trip Requests and Approvals

On a case-by-case basis, and with approval of the respective Field Office Director (FOD), the Center Administrator may allow a resident, under ICE/ERO staff escort, to visit a critically ill member of his/her immediate family, or attend an immediate family member's funeral and/or wake.

Residents will be able to attend family court, child welfare proceedings, or court ordered visitation in accordance with the ICE Detention and Removal of Alien Parents or Legal Guardians Directive. The Field Office point of contact for Child Welfare will be consulted as appropriate.

"Immediate family member" refers to a parent (including stepparent or foster parent), brother, sister, biological, adopted, or stepchild, and spouse (including common-law spouse).

"Critically ill" is defined as an immediate family member whose condition is life-threatening or has the immediate potential to become life-threatening.

The FOD is the approving official for non-medical emergency escorted trips from Family Residential Centers, and may delegate this authority to the Assistant FOD-level for any resident who does not require a high degree of control and supervision.

The Center Administrator will prepare and submit a plan for the care and supervision of related minors remaining at the Center. The Juvenile and Family Residential Management Unit Onsite Coordinator will review and approve this plan before requests are forwarded to the FOD. The child may accompany the parent/guardian according to the parent's/guardian's wishes.

The FOD will review the merits of the request, by consulting with appropriate persons to determine the validity and appropriateness of the request. When the plan is adjudicated, the respective FOD will notify the Center Administrator and resident.

The Center Administrator will designate staff to help residents prepare requests for non-medical emergency trip requests, according to the stipulations outlined in this standard.

A staff member will forward the completed request to the resident's deportation staff.

The deportation staff will review the merits of the request, to include consultations with immigration enforcement agents, medical staff, the resident's family, and other persons in positions to provide relevant information.

### 5.3 Escorted Trips for Non-medical Emergencies

On the basis of the information collected, the deportation staff will report to the Center Administrator on the appropriateness of the resident's request and the amount of supervision the travel plan may entail.

#### B. Types of Trips and Travel Arrangements

##### 1. Local Trip

A "local" trip constitutes up to and including a 10-hour absence from the Center. ICE/ERO assumes the costs.

##### 2. Extended Trip

An "extended" trip involves more than a 10-hour absence and may include an overnight stay.

##### 3. Travel Arrangements

ICE/ERO will make all travel arrangements; however, travel involving a commercial carrier may not commence until the resident or person acting on his/her behalf has submitted an open paid-in-full ticket or electronic-ticket voucher in the resident's name.

As needed, ICE/ERO will provide overnight housing near the resident's destination. The FOD or designee will determine appropriate overnight accommodations.

ICE/ERO will pay the travel costs incurred by the transporting staff members.

#### C. Selection of Escorts

No fewer than two escorts are required for each trip. At least one of the escorts must be the same gender as the resident. The FOD or his/her designee will select and assign the roles of the transporting staff members (escorts) and delegate to one the decision-making authority for the trip.

#### D. Supervision and Restraint Requirements

Except when the resident is housed in a Center, transporting staff members will maintain constant and immediate visual supervision of any resident who is under escort and will follow the policy and procedures in the ICE Family Residential Standards on *Transportation (by Land)* and the ICE Family Residential Standards on *Use of Physical Control Measures and Restraints*.

#### E. Training

Escorts and others, as appropriate, will receive training on this standard, the ICE Family Residential Standard on *Staff Training*, the ICE Family Residential Standard on *Transportation (by Land)* and the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints*.

#### F. Escort Instructions

Escorts will maintain constant visual supervision of the resident during the trip except when temporarily lodging in a secure Center. Escorting staff will follow the policy and procedures in:

- ICE Family Residential Standard on *Transportation (by Land)*; and

### 5.3 Escorted Trips for Non-medical Emergencies

- ICE Family Residential Standard on *Use of Physical Control Measures and Restraints*.

Escorts will follow the applicable policies, standards, and procedures listed above in this standard.

Routes, meals, and lodgings (if necessary) will be arranged prior to departure.

Escorts will follow the schedule included in the trip authorization, arriving at and departing from the places and events listed at the specified times.

For security reasons, the trip route and schedule will be confidential.

The responsible transporting staff member will report unexpected developments to the FOD or designee, who will issue instructions for completion of the trip.

Escorts will deny the resident access to any intoxicant, narcotic, drug paraphernalia, or drug not prescribed for his/her use by the medical staff.

All use of restraints will be in compliance with the ICE Family Residential Standard on *Use of Physical Control Measures and Restraints*.

Escorts will advise the resident of the rules in effect during the trip in a language or manner the resident can understand.

Among other things, the escorted resident may not:

- Bring discredit to ICE/ERO;
- Violate any Federal, State, or local law;
- Make unauthorized phone calls; or
- Arrange any visits without the express permission of the Center Administrator.

If the resident breaches any of the rules of this standard and/or the escorts determine a need to abort the trip, then the responsible escorts will immediately contact his/her FOD, who will have authority to abort the trip, and immediately return to the Center.

Residents will not be subject to any form of random testing upon return from a non-medical emergency trip; however, they will be referred to Center Medical Authority for consultation in circumstances that warrant further medical attention.

Staff members may not accept gifts or gratuities from the resident or any other person in appreciation for performing escort duties or for any other reason.

Escorts will ensure that residents with physical or mental disabilities are provided reasonable accommodations in accordance with safe and secure Center operations.

## References

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Staff Training

### **5.3 Escorted Trips for Non-medical Emergencies**

- ICE Family Residential Standard on Transportation (by Land)
- ICE Family Residential Standard on Use of Physical Control Measures and Restraints
- Detention and Removal of Alien Parents or Legal Guardians Directive



## 5.4 Marriage Requests

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that each marriage request from an ICE/Enforcement and Removal Operations (ERO) resident receives a case-by-case review, based on internal guidelines for approval of such requests.

The guidelines provided in this standard are internal and will not be construed as creating rights for residents or other persons or preventing the Field Office Director (FOD) from exercising discretion in conducting the required case-by-case review.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Each marriage request from an ICE/ERO resident will be reviewed on a case-by-case basis.
2. Consistency in decisions to approve or deny a marriage request will be achieved by the application of guidelines.
3. Ordinarily, a resident's request for permission to marry will be granted.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Marriage Requests* dated 12/21/2007.

**5.4 Marriage Requests**

## **Expected Practices**

### **A. Written Policy and Procedures Required**

All Centers will have in place written policy and procedures to enable eligible ICE/ERO residents to marry.

### **B. Resident Notification**

The resident handbook and local supplement provided to residents upon admission will advise residents of the Center's marriage request procedures.

### **C. Resident Request to Marry**

A resident, or his/her legal representative, must submit to the FOD a written request for permission to marry.

The request must:

- Specifically express that the resident is legally eligible to be married in the State where the resident is being housed;
- Specifically state that the resident is mentally competent; and
- Be accompanied by the intended spouse's written affirmation of his/her intent to marry the resident.

### **D. Consideration and Approval**

The FOD may approve or deny a marriage request. When the request is adjudicated, the FOD will notify the resident in writing within 30 days. If the request is denied, then the notification will provide the reasons for the denial. Written denials will be maintained in the resident's file. A resident's marriage request will be denied if:

- The resident is not legally eligible to be married in the State where the resident is being housed;
- The resident is not mentally competent, as determined by a qualified medical practitioner;
- The intended spouse has not affirmed, in writing, his/her intent to marry the resident;
- The marriage ceremony would present a threat to safe and secure Center operations; or
- A compelling governmental interest exists for denying the request.

Residents may seek legal assistance throughout the marriage application process.

If the request is denied, then the resident may submit an appeal to the FOD.

When a request is approved, the resident, legal representative, or other individual(s) acting on his/her behalf must make all the marriage arrangements, including, but not limited to:

- Taking blood tests;
- Obtaining the marriage license; and
- Retaining an official to perform the marriage ceremony.

**5.4 Marriage Requests**

ICE/ERO personnel will not participate in making marriage arrangements nor serve as witnesses in the ceremony.

Staff will notify the resident in a timely manner of a time and place for the ceremony.

**E. Guidelines**

The marriage may not interrupt regular or scheduled processing or action in a resident's legal case. Specifically, it may neither interrupt nor stay any resident's hearing, transfer a resident to another Center, or remove a resident from the United States.

Transfers will not occur solely to prevent a marriage.

Ordinarily, arrangements made by the resident or persons acting on his/her behalf will be accommodated, consistent with safe and secure Center operations, according to the following stipulations:

- The ceremony will take place inside the Center;
- The resident may not leave the Center to make arrangements;
- All expenses relating to the marriage will be borne by the resident or person(s) acting on his/her behalf; and
- The ceremony will be private with no media publicity. Only individuals essential for the marriage ceremony, such as required witnesses, may attend.

Minors can request to marry in accordance with state law, with parental consent, and in compliance with ICE policy.

The Center Administrator reserves the right of final approval concerning the time, place, and manner of all arrangements.

**F. Revocation of Approval**

The FOD may revoke approval of a marriage request under the terms identified in the Consideration and Approval section in this standard. The affected resident will be provided with written notification regarding the reason for revocation. In such instances, the resident may file an appeal.

**G. Documentation in File**

A copy of the resident's marriage request and adjudication will be placed in the residential file. After the marriage ceremony, the Center Administrator will forward copies of the marriage licensing documentation to the respective field office and maintain a copy in the residential file.

**References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes

## 5.5 Voluntary Work Program

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard provides residents opportunities to work and earn money while in residence, subject to the number of work opportunities available while maintaining safe and secure Center operations. While not legally required to do so, ICE/Enforcement and Removal Operations (ERO) affords working residents basic Occupational Safety and Health Administration (OSHA) protections.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents may have opportunities to work and earn money while in residence, subject to the number of work opportunities available and within the constraints of safe and secure Center operations.
2. Residents will be able to volunteer for work assignments but otherwise will not be required to work, except to do personal housekeeping as described in the ICE Family Residential Standard on *Housekeeping*.
3. Resident working conditions will comply with all applicable Federal, State, and local work safety laws and regulations.
4. Residents will not be denied voluntary work opportunities on the basis of race, religion, national origin, gender, sexual orientation, or disability.

## 5.5 Voluntary Work Program

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Housekeeping and Voluntary Work Program* dated 12/21/2007.

### Expected Practices

#### A. Voluntary Work Program

Centers will establish policies and procedures for a resident voluntary work program (VWP). The personal housekeeping plan as detailed in the ICE Family Residential Standard on *Housekeeping* is not part of the VWP. Residents who are physically and mentally able to work will be provided the opportunity to participate in the VWP. Residents under 18 years of age will not be authorized to participate in the VWP.

#### B. Work Assignment Selections

The Center's policy and procedures will include rules for selecting VWP work assignment volunteers.

Residents will be eligible to work only when such work does not interfere with their primary responsibility to care for their children. This includes while their children are in class, in an organized activity, or possess a free movement pass.

No special privileges will be afforded to any worker as a result of work performed in the VWP.

Residents will sign a work agreement acknowledging that they are requesting to participate in the VWP, and their participation is voluntary. Centers will provide appropriate training before residents sign the VWP agreement and before any voluntary work is performed.

#### C. Resident Selection

The Center Administrator will develop site-specific rules for selecting work detail volunteers. These site-specific rules will be recorded in a Center procedure that will include a VWP agreement. The VWP agreement will document the Center's program and will be in compliance with this standard.

Staff will explain the rules and regulations relating to the resident worker's status. The resident will be required to sign a VWP agreement before commencing each new assignment. Completed agreements will be filed in the resident's file.

#### D. Discrimination in Hiring Prohibited

Residents will not be denied voluntary work opportunities on the basis of factors such as a resident's race, religion, national origin, gender, sexual orientation, or disability.

#### E. Physical and Mental Health and Residents with Disabilities

Although medical or mental health restrictions may prevent some residents with physical or mental disabilities from working, those with less severe disabilities will have the opportunity to participate in the VWP in appropriate work assignments.

## **5.5 Voluntary Work Program**

The selecting staff member must consider the precise limitations of a resident with disabilities before rejecting that individual for selected work assignments.

Expediency or convenience is insufficient justification to reject or “pigeonhole” a resident who, with reasonable accommodation, can perform essential functions of the work assignment and does not compromise the resident, staff, or safe and secure Center operations.

In disputed cases, the selecting staff member will consult medical personnel to ascertain the resident’s suitability for a given project. Written decisions on disputed cases will be placed in the resident’s file.

### **F. Hours of Work**

Residents who participate in the VWP are required to work according to a schedule.

The normal scheduled workday for a resident participating in the VWP is a maximum of 8 hours. Residents will not be permitted to work in excess of 8 hours daily or 40 hours weekly.

Unexcused absences from work or unsatisfactory work performance may result in removal from the VWP.

### **G. Number of Details in One Day**

The Center Administrator may restrict the number of work details permitted a resident during one day. A resident will be required to sign a VWP agreement before every new assignment. Completed agreements will be filed in the resident’s file.

### **H. Compensation**

Residents will receive monetary compensation for work completed in accordance with the Center’s VWP policy.

The compensation is at least \$1 (USD) per day. Compensation will be placed in the resident’s Center account and will be paid daily. The Center will have an established system that ensures residents receive the pay owed them before being transferred or discharged.

### **I. Removal of Resident from Work Detail**

A resident may be removed from a work detail for causes such as but not limited to:

- Unsatisfactory performance;
- Disruptive behavior, threats to security, etc.;
- Despite reasonable accommodations, physical inability to perform the essential elements of the job due to a medical condition or lack of strength;
- Unexcused absences from work; or
- Prevention of injuries to the resident.

## 5.5 Voluntary Work Program

The Work Supervisor is the only person authorized to remove a resident from a work assignment. When a resident is removed from a work assignment, written documentation of the removal circumstances and reasons will be provided to the resident and a copy placed in the resident's residential file. Residents may file a grievance if they believe they were removed unfairly from work, in accordance with the ICE Family Residential Standard on *Grievance System*.

### J. Resident Responsibility

The Center Administrator will establish procedures for informing resident volunteers about on-the-job responsibilities and reporting procedures.

The resident is expected to be ready to report for work at the required time and may not leave an assignment without permission.

The resident will perform all assigned tasks diligently and conscientiously, as directed by the job supervisor.

The resident may not evade attendance and performance standards in assigned activities or encourage others to do so.

The resident will exercise care in performing assigned work, using safety equipment and taking other precautions in accordance with the Work Supervisor's instructions.

In the event of a work-related injury, the resident will notify the Work Supervisor, who will implement injury-response procedures immediately.

### K. Resident Training and Safety

All Centers will comply with all applicable health and safety regulations and standards, as well as all other applicable federal, state, local, and tribal laws.

The Center Administrator will ensure that all department heads, in collaboration with the Center's safety/training staff member, develop and institute appropriate training for all resident workers.

The VWP will operate in compliance with the following codes and regulations:

- OSHA regulations;
- National Fire Protection Association (NFPA) 101 Life Safety Code;
- International Council Codes; and
- Other State and local health and safety regulations.

Residents must receive appropriate training prior to beginning the VWP.

Each Center Administrator's designee is responsible for providing access to complete and current versions of the documents listed above.

The Center Administrator will ensure that the Center operates in compliance with all applicable standards.



## 5.5 Voluntary Work Program

Upon a resident's assignment to a job or detail, the Work Supervisor will provide thorough instructions regarding safe work methods, injury-response procedures, and, if relevant, hazardous materials:

- Supervisors will demonstrate safety features and practices; and
- Supervisors will notify residents of hazards in the workplace, including the purpose for protective devices and clothing provided and the importance of reporting deficiencies to their supervisors. Staff and residents who do not read or understand English will not be authorized to work with hazardous materials.

A resident will not undertake any assignment before signing a VWP agreement that, among other things, confirms that the resident has received and understood training from the Work Supervisor about the work assignment.

The VWP agreement, which each resident is required to sign prior to commencing each new assignment, will be placed in the resident's file. If requested, a copy of the VWP agreement will be provided to the resident.

The Center health care provider, in conjunction with the ICE Health Service Corps, will ensure that residents are medically screened and certified before undertaking a food service assignment.

The Center will provide residents with safety equipment that meets OSHA and other Standards associated with the task performed.

The Center Administrator will ensure that the Center operates in compliance with all applicable standards.

### L. Resident Injury and Reporting Procedures

The Center Administrator will implement procedures for responding immediately and appropriately to resident on-the-job injuries, including notifying the Juvenile and Family Residential Management Unit Onsite Coordinator immediately.

If a resident is injured while performing his/her work assignment, then:

- The Work Supervisor will notify the Center health care provider immediately. In the event the accident occurs in a Center that does not provide 24-hour medical care, the supervisor will contact the on-call medical staff member for instructions;
- First aid will be administered as necessary; and
- The medical health care provider will determine what treatment is necessary and where that treatment will take place.

The Work Supervisor will complete a resident accident report and submit it to the Center Administrator for review and processing and file it in the resident's file and alien file.

## References

- ICE Family Residential Standard on Definitions

### **5.5 Voluntary Work Program**

- ICE Family Residential Standard on Grievance System
- ICE Family Residential Standard on Housekeeping
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- International Council Codes
- National Fire Protection Association (NFPA) Codes
- U.S. Occupational Safety and Health Administration (OSHA) Codes

## 5.6 Recreation

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that Centers provide a well-defined and structured recreation program for all residents. The recreation program will provide various activities that promote physical and mental health and are appropriate to the ages and interests of all residents.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents will have daily opportunities during free movement to participate in leisure-time activities outside their respective living and activity areas.
2. Centers will ensure that minors have adequate recreational time outside of the physical education component of their academic program.
3. Residents will have access to exercise opportunities and equipment during free movement, both inside and outside the living and activity area and outdoors. Centers must maintain outdoor recreation areas for resident use. Daily indoor recreation also will be available. During inclement weather, residents will have access to indoor recreational opportunities, with access to natural light.
4. Recreational programs will be designed to accommodate the specialized needs of adults and minors.

**5.6 Recreation**

5. When not in school, minors will be provided structured physical activities such as organized sports, activities including dance, intellectually stimulating activities, arts and crafts, and music.
6. Centers will provide recreational opportunities that are age-appropriate for all minors, including minors with disabilities.
7. Centers will foster appropriate staff interaction with residents engaged in activities.
8. Each recreation volunteer who provides or participates in Center recreational programs will comply with applicable sections of the ICE Family Residential Standard on *Staff Training*.

## **Standards Affected**

This standard replaces the ICE Family Residential Standard on *Recreation* dated 12/21/2007.

## **Expected Practices**

### **A. Indoor and Outdoor Recreation**

Centers must provide daily indoor and outdoor recreational and other activities appropriate to the needs, interests, and abilities of residents, so that every adult and minor is able to participate. The size of indoor and outdoor recreation areas will include consideration of State or other licensing requirements for similar Centers. The Field Office Director and Juvenile and Family Residential Management Unit Chief will approve Center recreational and activity schedules.

Each outdoor recreation area must provide ample green space for use by minors and adults. This space should include shaded areas with seating, age-appropriate play areas, a soccer-style field, and other athletic activity areas at the Center Administrator's discretion.

Each indoor recreation area must provide the minimum amount of square footage, including unencumbered space and appropriate ceiling height, to provide access to age-appropriate play and physical education activities for at least one-quarter of the residents at any given time. Space considerations should include each Center allowing open access during daylight hours. Areas will have appropriate space to allow for the designed activities to be conducted in a safe manner.

### **B. Recreation Schedule**

Residents will have access to outdoor recreation areas from a minimum of 8 a.m. to dusk 7 days a week, weather permitting. Daily indoor recreation also will be available during these hours. During inclement weather, residents will have access to indoor recreational opportunities with access to natural light.

Recreation schedules, to include structured activities, will be provided to the residents or posted in the Resident Information Center.

**5.6 Recreation**

Under no circumstances will the Center require residents to forgo basic law library privileges for recreation privileges in accordance with the ICE Family Residential Standard on *Law Libraries and Legal Material*.

**C. Structured Activities**

Centers will provide structured activities and programs daily for all residents. In particular, these programs and activities will focus on growth, development, family interactions, and healthy living.

Centers must provide daily indoor and outdoor recreation and other activities appropriate to the needs, interests, and abilities of families and children, so that every adult and minor is able to participate.

**D. Activities**

Centers will provide various activities and equipment daily as part of the activities program.

Activities should include arts and crafts, entertainment, reading materials, table games, puzzles and board games, etc. Age-appropriate equipment will be provided to minors and adults and should include play, sporting, and fitness items.

**E. Activity Coordinator**

The Center Administrator will designate a Center staff member responsible for developing and overseeing the recreation program. The Activity Coordinator will assess the needs and interests of the residents:

- Centers will employ a full-time Activity Coordinator who will possess a minimum of a bachelor's degree in physical education or related field of study and additional training in implementing and overseeing a recreation program;
- The Activity Coordinator will be responsible for developing and overseeing the recreational program; and
- Through routine staff and resident surveys of the recreation and activity needs and interests, the Activity Coordinator will assess and make modifications to the program.

**F. General Requirements**

All Centers will provide recreational opportunities for all residents, including those with disabilities.

Centers will provide a room or an area that is set aside and designed for toddlers. This area will address the developmental needs of toddlers to include activities, games, and toys.

Centers will establish and provide structured toddler programming a minimum of three times per week. These activities will be conducted by staff or trained volunteers. At least two sessions each week will not require parent/guardian involvement.

Staff will participate actively with residents engaged in recreational activities.

**5.6 Recreation**

Cardiovascular exercise will be available to all residents, including residents with disabilities or medical conditions that preclude their participation in outdoor recreation.

Recreational activities will be based on the Center's size and location. Recreational activities may include limited-contact sports, such as soccer, basketball, volleyball, and table games, and may extend to intramural competitions among units.

Living and activity areas will offer a wide selection of age-appropriate toys, board games, television, and other sedentary activities.

Staff will supervise dayroom activities, distributing games and other recreation materials daily.

Centers will develop an appropriate and adequate supply of recreation equipment to meet the needs of the residential population. Centers will be responsible for maintaining this inventory in the appropriate state of repair.

The Center health care provider may restrict a resident's participation in the recreation program due to medical needs and limitations.

All residents participating in outdoor recreation will have access to drinking water and toilets.

Staff will search recreation areas before and after use to detect altered or damaged equipment and emergent safety issues. They also will issue all portable equipment items, and check each item for damage and general condition upon its return.

Programs and activities are subject to the Center's security and operational guidelines and may be restricted at the Center Administrator's discretion. Recreation areas will be under continuous supervision by staff equipped with radios or other communication devices to maintain contact with the control center when residents are present to ensure the safety of residents.

Residents may engage in independent recreation activities, such as board games and small-group activities, consistent with safe and secure Center operations.

The Center Administrator will establish Center policy concerning television viewing in dayrooms. All television viewing schedules will be subject to the Center Administrator's approval.

Residents will be provided wireless headsets for television viewing, with access to appropriate language stations or choices.

**G. Other Programs and Activities**

Centers will offer access to reading materials, through libraries with regular hours. Reading materials in English, Spanish, and, if practicable, other languages, will be made available.

Centers will offer other programmatic activities, such as:

- Adult educational classes or speakers;
- Groups focused on healthy living; and
- Other organized activities or recreational programs.

**5.6 Recreation****H. Volunteer Program Involvement**

A volunteer group may provide a special recreational or educational program, consistent with security considerations, availability of personnel to supervise participating residents, and sufficient advance notification to the Center Administrator.

The ICE Family Residential Standard on *Visitation* details requirements that must be met for a volunteer to be approved to visit with or provide religious activities for residents.

**References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Law Libraries and Legal Material
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Staff Training
- ICE Family Residential Standard on Visitation



## 5.7 Religious Practices

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents of different religious beliefs are provided reasonable and equitable opportunities to participate in the practices of their respective faiths, constrained only by concerns about safe and secure Center operations.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents will have regular opportunities to participate in practices of their religious faiths, limited only by a documented threat to the safety of persons involved in such activity itself or disruption of order in the Center. All religions represented in a resident population will have equal status without discrimination based on any resident's race, ethnicity, religion, national origin, sex, gender identity, sexual orientation, or disability.
2. Centers will plan, administer, and coordinate their religious program in an organized and orderly manner.
3. Adequate space, equipment, and staff (including security and clerical) will be provided to conduct and administer religious programs.

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4. The Chaplain or Religious Services Coordinator (RSC) will make documented efforts to recruit external clergy or religious service providers to provide services to adherents of faith traditions not directly represented by chaplaincy or RSC staff. Residents are encouraged to provide information about local religious providers.
5. Each Center's religious program will be augmented and enhanced by community clergy, contractors, volunteers, and groups who provide individual and group assembly religious services and counseling.
6. Residents in hospital units will have access to religious activities and practices to the extent compatible with medical requirements.
7. Special diets will be provided for residents whose religious beliefs require adherence to religious dietary laws.
8. As part of the Center's admission and orientation program, residents will be provided information about religious programs at the Center, including how to contact the Chaplain or RSC, how to request visits or services by other religious services providers, how to request religious diets, and how to access religious property and headwear.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Religious Practices* dated 12/21/2007.

## Expected Practices

### A. Religious Opportunities and Limitations

Residents will have opportunities to engage in practices of their religious faith consistent with safe and secure Center operations. Religious practices to be accommodated will not be limited to practices that are compulsory, central, or essential to a particular faith tradition, but will cover all sincerely held religious beliefs. Attendance at all religious activities is voluntary.

Efforts will be made to allow for religious practice in a manner that does not adversely affect and/or compromise the safety and security of other residents not participating in the practice. Residents cannot be required to participate in or attend a religious activity to receive a service of the Center or participate in other non-religious activities. Chaplains, RSCs, and volunteers will not provide unsolicited religious services or counseling to residents.

Religious activities will be open to the entire resident population, without discrimination based on a resident's race, ethnicity, religion, national origin, sex, gender identity, sexual orientation, or disability.

When necessary for safe and secure Center operations, the Center Administrator may discontinue a religious activity or practice, or limit participation to a reasonable number of residents or to members of a particular religious group after consulting with the Chaplain or RSC. Center records

**5.7 Religious Practices**

will reflect the limitation or discontinuance of a religious practice, as well as the reason for such limitation or discontinuance.

When Centers must limit certain activities or practices (e.g., fasts, ceremonial meals, headwear requirements, work proscriptions) as indicated above, those residents whose files reflect the pertinent religious preference must be provided access to those religious activities or practices.

When a resident submits a request concerning the reason for denial of access to religious activities, centers, or meals, a copy of the request and response to the request will be placed in his/her residential file.

**B. Religious Preferences**

Each resident will designate any religious preference, or none, during admission. Staff, contractors, and volunteers may not disparage the religious beliefs of a resident, nor coerce or harass a resident to select or change a religious affiliation.

A resident may request to change his/her religious preference designation at any time by notifying the Chaplain, RSC, or other designated individual in writing, and the change will be implemented in a timely fashion.

In determining whether to allow a resident to participate in specific religious activities, staff will refer to the initial religious preference information and any subsequent changes in the resident's religious designation. Residents whose files show "No Preference" may be restricted from participation in those activities deemed appropriate for members only.

**C. Chaplains or RSCs**

The Center Administrator will designate a permanent staff member to manage and coordinate religious activities for residents. Volunteers should augment but not be left to manage these programs absent a more permanent contract or agreement (e.g., through an established religious institution). Ordinarily, that staff member or contractor will be the Center Chaplain or RSC, who will, in cooperation with the Center Administrator and staff, plan, direct, and supervise all aspects of the religious program, including approving and training both lay and clergy volunteers from faiths represented in the resident population. The Center Administrator will provide non-resident clerical staff support for confidential materials.

The Chaplain or RSC, regardless of his/her specific religious affiliation, will have basic knowledge of different religions and will ensure equal status and protection for all religions.

The Chaplain or RSC will have physical access to all areas of the Center to serve residents.

A Chaplain will have a minimum qualification of clinical pastoral education or specialized training, and endorsement by the appropriate religious-certifying body. In lieu of these, the Center Administrator may accept adequate documentation of a recognized religious or ministerial position in the faith community.

The Chaplain will be available to provide pastoral care and counseling to residents who request it, both through group programs and individual services. Residents who belong to a religious faith

**5.7 Religious Practices**

different from that of the Chaplain or RSC may, if they prefer, have access to pastoral care and counseling from external clergy and religious service providers. The Chaplain may, for the purpose of informed decision making, ask a resident to explain special or unfamiliar requests.

If the Center has an RSC rather than a Chaplain, then the RSC will have the necessary training to connect residents with a broad range of religious services and be prepared to arrange religious services for multiple faith traditions and connect incoming residents with resources and services specific to the resident's particular faith.

The term "individual services" includes counseling services provided to individual residents or members of their families in personal crisis and family emergency situations.

**D. Schedules and Centers**

All Centers will designate adequate space for religious activities.

This designated space must be sufficient to accommodate the needs of all religious groups in the resident population fairly and equitably. The general area will include office space for the Chaplain or RSC, storage space for items used in religious programs, and proximity to lavatory facilities.

Religious service areas will be maintained in a neutral fashion suitable for use by various faith groups.

The Chaplain or RSC will schedule and direct the Center's religious activities, and current program schedules will be posted on the Resident Information Center in languages understood by most residents. The Chaplain or RSC will ensure the range of religious services to include those appropriate for minors. When scheduling approved religious activities, Chaplains or RSCs must consider both the availability of staff supervision and the need to allot time and space equitably among different groups. The Chaplain or RSC ordinarily will not schedule religious services to conflict with meal times.

If outdoor recreation is available at the Center, then residents will have opportunities for outside worship, prayer, and meditation, which will be provided in a manner that does not conflict with meal times.

**E. Contractors and Volunteers**

All Centers will have procedures so that clergy, contractors, volunteers, and community groups may provide individual and group assembly religious services and counseling that augment and enhance the religious program. When recruiting citizen volunteers, the Chaplain or RSC and other staff will be cognizant of the need for representation from all cultural and socioeconomic parts of the community. Each Center will provide security, including staff escorts, to allow such individuals and groups Center access for sanctioned religious activities.

The Chaplain or RSC may contract with representatives of faith groups in the community to provide specific religious services that he/she cannot deliver personally and may secure the assistance and services of volunteers.

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“Representatives of faith groups” includes both clergy and spiritual advisors. All contractual representatives of resident faith groups will be afforded the same status and treatment to assist residents in observing their religious beliefs, unless safe and secure Center operations warrant otherwise.

The ICE Family Residential Standard on *Visitation* details requirements that must be met for a volunteer to be approved to visit with and/or provide religious activities for residents, including advance notice, identification, a background check, an orientation to the Center, and a written agreement to comply with applicable rules and procedures. Provided they meet established security requirements for entrance into the Center, religious services providers’ interpreters will be allowed to accompany the religious services provider within the Center.

The Center Administrator or designee (ordinarily the Chaplain) may require a recognized representative of a faith group to verify the religious credentials of contractors or volunteers prior to approving their entry into the Center.

Residents who are members of faiths not represented by clergy may conduct their own services, provided these do not interfere with Center operations.

**F. Pastoral Visits**

If requested by a resident, the Chaplain, RSC, or designee will facilitate arrangements for pastoral visits by a clergyperson or representative of the resident’s faith.

The Chaplain or RSC may request documentation of the person’s religious credentials, as well as a criminal background check.

Pastoral visits ordinarily will take place in a private visiting room during regular visiting hours. Accommodation may be made in the legal visitation area when available.

**G. Residents in Hospital Units**

Residents in a hospital unit will be permitted to participate in religious practices, consistent with safe and secure Center operations.

Residents in a hospital unit will have regular access to the Chaplain or RSC. The Chaplain or RSC will provide pastoral care in hospital units weekly, at minimum.

Residents of any faith tradition ordinarily may have access to official representatives of their faith groups while housed in hospital units by requesting such visits through the Chaplain or RSC. Requests will be accommodated consistent with the terms of the representative’s contract and safe and secure Center operations.

**H. Introduction of New or Unfamiliar Religious Components**

Residents may make a request for the introduction of a new or unfamiliar religious practice to the religious services program (e.g., schedule, meeting time and space, religious items, and attire) to the Chaplain or RSC. The Chaplain or RSC may ask the resident to provide additional information to use

**5.7 Religious Practices**

in deciding whether to include the practice. Ordinarily, the process will require up to 30 business days for completion.

The Chaplain or RSC may meet with the resident to discuss the request. The Chaplain or RSC will research the request and make recommendations to the Center Administrator. Such decisions are subject to the Center's requirement to maintain safe and secure Center operations, and the availability of staff for supervision. The Field Office Director will make a decision within 30 business days and forward the final decision to the Center Administrator and the Juvenile and Family Residential Management Unit Chief. The Chaplain or RSC will communicate the decision to the resident. All denials will be documented in the resident's file.

**I. Religious Holy Days**

Each Center will have in place written policy and procedures to facilitate resident observance of important holy days, consistent with safe and secure Center operations. The Chaplain or RSC will work with residents to accommodate proper observances.

The Center Administrator will facilitate the observance of important religious holy days that involve special fasts, dietary regulations, worship, or work proscription. When the Center Administrator, Chaplain, or RSC is unfamiliar with the requested observance, the Center Administrator may direct the Chaplain or RSC to consult with community representatives of the resident's faith group and other appropriate sources.

**J. Religious Property and Personal Care**

Each Center Administrator will allow residents to have access to personal religious property, consistent with safe and secure Center operations. If necessary, the religious significance of such items will be verified by the Chaplain or RSC prior to Center Administrator approval. The Center Administrator also may direct the Chaplain or RSC to obtain information and advice from representatives of the resident's faith group or other appropriate sources, about the religious significance of the items. Centers will allow resident access to personal religious property, consistent with safe and secure Center operations. Centers will adhere to the Religious Freedom Restoration Act guidelines. Religious property will be handled with respect at all times, including during the admissions process.

Resident religious property includes, but is not limited to, holy books, rosaries and prayer beads, oils, prayer rugs, prayer rocks, phylacteries, medicine pouches, and religious medallions. Such items are part of a resident's personal property and are subject to normal considerations of safe and secure Center operations.

Centers will provide an opportunity for residents to deposit authorized religious property in a designated space for safekeeping.

As is consistent with safe and secure Center operations, the Center Administrator ordinarily will allow a resident to wear or use personal religious items during religious services, ceremonies, and meetings in the chapel, and may upon request of a resident, allow a resident to wear or use certain religious items throughout the Center. The Center Administrator will consult with the Chaplain or



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RSC and representatives of the resident's faith group or other appropriate sources when determining whether to approve the request.

**K. Religious Headwear and Garments**

Religious headwear, notably kufis, yarmulkes, turbans, crowns, and headbands, as well as scarves and head wraps for Orthodox Christian, Muslim, and Jewish women are permitted in all areas of the Center, subject to the normal considerations of safe and secure Center operations, including inspection by staff. Religious garments and headwear will be handled with respect at all times, including during the admissions process.

Items of religious wearing apparel include, but are not limited to:

- Prayer shawls and robes;
- Kurda or ribbon shirts;
- Medals and pendants;
- Beads; and
- Various types of headwear.

Appendix 5.7.A: Religious Headwear, Garments, and Other Religious Property provides examples of acceptable religious headwear, garments, and other religious property. There may be circumstances in which it is not advisable to permit the use of these items in a Center. Nothing in these guidelines is intended to prevent Centers from making individualized decisions based on the need to maintain safe and secure Center operations. Any denial and the reason for it will be documented and placed in the resident's file.

Consistent with safe and secure Center operations, the Center will not cut or shave religiously significant hair.

A resident who wishes to have religious books, magazines, or periodicals must comply with the Center's general rules for ordering, purchasing, retaining, and accumulating personal property. Religious literature will be permitted in accordance with the procedures governing incoming publications. Distribution of religious literature purchased by or donated to ICE/Enforcement and Removal Operations will be contingent upon approval from the Chaplain or RSC.

**L. Dietary Requirements**

When a resident's religion requires special food services, daily or during certain holy days or periods that involve fasting, restricted diets, etc., staff will make all reasonable efforts to accommodate those requirements (e.g., by modifying the resident's menus to exclude certain foods or food combinations or providing the resident's meals at nonstandard meal times).

A resident who wants to participate in the religious diet (common fare) program may initiate the "Authorization for Common Fare Participation" form or its equivalent that is attached to the ICE Family Residential Standard on *Food Service*. That standard also details the circumstances under which a resident may be removed from a special religious diet because he/she has failed to observe those dietary restrictions.



**5.7 Religious Practices**

“Common fare” refers to a no-flesh protein option provided whenever an entrée containing flesh is offered as part of a meal. Likewise, a “common fare” meal offers vegetables, starches, and other foods that are not seasoned with flesh. The diet is designed as the foundation from which modifications can be made to accommodate the religious diets of various faiths. Modifications to the standard common fare menu may be made to meet the requirements of various faith groups (e.g. for the inclusion of kosher and/or halal flesh-food options).

When there is any question about whether a requested diet is nutritious or may pose a threat to health, the Chaplain or RSC will consult with the medical unit.

**M. Religious Fasts**

The Chaplain or RSC will develop the religious fast schedule for the calendar year and will provide it to the Center Administrator or designee. There are generally two different types of fasts: a public fast and a private or personal fast.

When residents observe a public fast that is mandated by law or custom for all the faith adherents (e.g., Ramadan, Lent, Yom Kippur), the Center will provide a meal nutritionally equivalent to the meal(s) missed. Public fasts usually begin and end at specific times.

When a resident fasts for personal religious reasons, no special accommodations need to be made for the meal(s) missed. Requests for meals after a personal fast will be determined by the Center Administrator on a case-by-case basis.

**N. Work Assignments**

Residents who have voluntary work assignments will not be compelled to work on their religious holy days.

**O. Religious Use of Wine**

Religious use of wine by clergy members generally is permitted when mandated by the particular faith and pursuant to strict controls and supervision, to include the following provisions:

- Only a small amount of wine for clergy members and that which is necessary to perform religious ceremonies or services will be permitted in the Center;
- All wine brought into the Center will be secured in an appropriate area by staff prior to the religious ceremony or service for which the wine is needed; and
- Following the religious ceremony or service, unused portions of wine will be discarded immediately, stored in a secure area, or removed from the Center.

**P. Death or Serious Illness of Family Members**

The Center Administrator will establish procedures to involve the Chaplain or RSC in notifying residents of serious illness or death of their family members.

**5.7 Religious Practices****References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Food Service
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Visitation
- This standard incorporates requirements of the Religious Freedom Restoration Act of 1993 and the Religious Land Use and Institutionalized Persons Act of 2000, which provide a higher level of protection for a resident's right of religious exercise than the First Amendment to the United States Constitution. Center policies or actions by officials that impose a substantial burden on a resident's religious exercise must be justified by "a compelling government interest" and must be "the least restrictive means available to achieve that interest." All residents are afforded the protections of these Federal laws.

## Appendix 5.7.A: Religious Headwear, Garments, and Other Religious Property

The following are examples of generally acceptable religious headwear, garments, and other religious property/articles of faith. There may be circumstances in which it is not advisable to permit the use of these items in a Center. Nothing in these guidelines is intended to prevent Centers from making individualized decisions based on the need to maintain safety and security of residents and staff. Any denial of accommodation and the reason for it will be documented and placed in the resident's file.

### A. Religious Headwear

Examples of religious headwear include:

- Yarmulke (Jewish)
- Kufi (Muslim)
- Hijab (Muslim; worn by women)
- Crown (Rastafarian)
- Turban (Sikh)

Centers may restrict the color, size, or other features of religious headwear, as necessary to maintain safe and secure Center operations. Where Centers restrict the color, size, or other features of religious headwear, and the resident's personal religious headwear does not conform to the standard, the Center must ensure that residents are provided conforming religious headwear for free or at a minimal cost. The Chaplain or RSC, in consultation with community representatives of the resident's faith group and other appropriate sources, when necessary, will ensure that the Center restrictions on color, size, or other features of religious headwear are appropriate and meet the needs of the respective faith traditions.

### B. Religious Garments

Examples of religious attire and garments include but are not limited to:

- Scarves and headwraps (hijabs) (Jewish, Muslim, Rastafarian, Orthodox Christian; worn by women). These may be black, white, or off-white;
- Jumper dresses may be worn by women who wear loose-fitting clothing for the sake of modesty as consistent with their religious beliefs;
- Kachhehra (soldier's shorts) (Sikh men);
- Prayer shawls and robes; and
- Kurda or ribbon shirts during ceremonial use.

**5.7 Religious Practices****C. Religious Property and Articles of Faith**

Examples of religious property and articles of faith include but are not limited to:

- Holy books: Examples include but are not limited to: the Bible (Christian); the Koran (Muslim); and the Torah (Jewish). Holy books are permitted in accordance with the Center's general rules relating to retention of personal property and incoming publications, such as types of binding permitted;
- Kara (steel bracelet) (Sikh) may be permitted during meal times and under other limited circumstances depending on the size, weight, and appearance of the Kara and in light of security considerations. For example, a plain, light-weight, and non-decorative Kara generally is appropriate for low- and medium-security residents;
- Rosaries and prayer beads;
- Oils;
- Prayer rugs;
- Prayer rocks;
- Phylacteries; and
- Religious medallions and pendants.

## 5.8 Telephone Access

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents may maintain ties with their families and others in the community, legal representatives, consulates, courts, and government agencies as well as report an allegation of abuse by providing them reasonable and equitable access to telephone services.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Residents will have reasonable and equitable access to reasonably priced telephone services.
2. Residents with disabilities (such as hearing or speech disabilities) will be granted reasonable accommodations to allow for appropriate telephone services.
3. Residents and their legal counsel will be able to communicate confidentially and effectively with each other.
4. Privacy for resident telephone calls regarding legal matters will be ensured.
5. Telephone access procedures will foster legal access and confidential communications with attorneys.
6. Residents will be able to make free calls to the offices listed in the Direct or Free Calls section in this standard.

**5.8 Telephone Access**

7. Indigent residents (a resident is considered indigent if he/she has fewer than \$15 in his/her account) will be permitted free calls on an as-needed basis to family or other individuals assisting with the resident's immigration proceedings.
8. Resident telephone serviceability will be monitored and documented by ICE staff. Serviceability issues will be reported immediately to the vendor and monitored for timely resolution.
9. Telephones and preprogrammed numbers will be tested weekly.
10. Centers will strive to reduce telephone costs, including through the use of emerging telecommunications and Voice over Internet Protocol technologies.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Telephone Access* dated 12/21/2007.

## Expected Practices

### A. Telephones and Telephone Services

#### 1. Number

To ensure sufficient access, each Center will provide at least one operable telephone for every 12 residents.

Centers will be operating at the optimal level when at least one telephone is provided for every eight residents.

#### 2. Cost

Generally, residents or the persons they call will be responsible for the costs of telephone calls; required exceptions are listed below.

Each Center will provide residents with access to reasonably priced telephone services. Contracts for such services will comply with all applicable State and Federal regulations and be based on rates and surcharges comparable to those charged to the general public. Contracts also will provide the broadest range of calling options including, but not limited to, international calling, calling cards, and collect telephone calls, determined by the Center Administrator to be consistent with the requirements of sound Center management.

Centers will post a list of card and calling rates in each living and activity area. Center Administrators are encouraged to explore the use of new technologies that can facilitate the provision of cost-effective means for enhancing residents' ability to communicate by telephone, including, but not limited to, wireless and/or Internet communications.

Residents will be able to receive telephone cards in the mail and during visitation in accordance with the ICE Family Residential Standard on *Correspondence and Other Mail* and the ICE Family Residential Standard on *Visitation*. The Center Administrator may place a reasonable limit on the number of telephone cards an individual resident may receive. Residents are not allowed to sell telephone cards within Centers.

**5.8 Telephone Access****3. Maintenance**

Each Center will maintain resident telephones in proper working order. Residents may report out-of-order telephones. Resident complaints about telephone maintenance will be addressed promptly. Designated Center staff will inspect the telephones daily, promptly reporting out-of-order telephones to the repair service so that required repairs are completed quickly. This information will be logged and maintained by each Field Office. Center staff will notify residents and the ICE/Enforcement and Removal Operations (ERO) free legal service providers of procedures for reporting problems with telephones.

ICE/ERO headquarters will maintain and provide Field Offices a list of telephone numbers for consulates and the U.S. Department of Homeland Security (DHS)/Office of the Inspector General (OIG), as determined by ICE. All Field Offices are responsible for ensuring Centers that house ICE residents under their jurisdiction are provided with current Executive Office for Immigration Review (EOIR) *pro bono* legal service information. Supplemental lists maintained by the Field Office are authorized.

**4. Location**

Centers will install telephones in areas that provide privacy, reduced noise levels, and to which residents have unimpeded access. Centers should consider the following when installing telephones:

- Installing privacy panels (side partitions) that extend at least 36 inches to prevent conversations from being overheard; and
- Placing telephones away from televisions or in any area where it can be reasonably expected that excessive noise may interfere with the caller's ability to communicate effectively.

**5. Monitoring Resident Telephone Services**

**Center Staff Requirements.** Center staff members are responsible for ensuring on a daily basis that telephone systems are operational and that the free telephone number list is posted. After ensuring that each telephone has a dial tone, the staff members must be able to demonstrate that an individual has the ability to make calls using the free call platform. Any identified problems must be logged and reported immediately to the appropriate Center and ICE/ERO staff. ICE/ERO staff will review and follow up on problems reported by residents and others.

**B. Monitoring of Resident Telephone Calls**

Generally, resident calls will not be monitored. In certain limited or exceptional circumstances, telephone calls may be monitored to ensure the safety and security of staff, residents, and the Center. Each Center will have a written policy on the monitoring of resident telephone calls.

Telephone calls will not be monitored without the express written permission of the respective Field Office Director (FOD) and the concurrence of the Juvenile and Family Residential Management Unit (JFRMU) Chief. Absent a court order, resident telephone calls to a court or a legal representative will not be monitored aurally. Centers will provide monitoring information in the



**5.8 Telephone Access**

resident handbook and local supplement, as appropriate, and post the information in the telephone areas.

If telephone calls are monitored, then the Center will:

- Include a recorded message on its telephone system stating that all telephone calls are subject to monitoring;
- Notify residents in the resident handbook and local supplement provided upon admission as described in the ICE Family Residential Standard on *Admission and Release*; and
- At each monitored telephone, place a notice that states the following:
  - That resident calls are subject to monitoring; and
  - The procedure for obtaining an unmonitored call to a court, a legal representative, or for the purposes of obtaining legal representation.

ICE/ERO and the Center will coordinate in posting the notice in Spanish and in the prominent languages of most residents with limited English proficiency (LEP), where practicable.

A resident's call to a court, a legal representative, DHS/OIG, DHS Civil Rights and Civil Liberties, or for the purposes of obtaining legal representation may not be monitored electronically without a court order.

**C. Monitoring Resident Telephone Services**

FODs will ensure that all telephones for resident use are tested at least weekly.

Staff will report any telephone serviceability problem within 24 hours to the appropriate ICE point of contact.

Staff will document each serviceability test on a form that has been provided by ERO, and each Field Office will maintain those forms, organized by month, for three years.

**D. Resident Notification**

Each Center will provide telephone access rules in writing to each resident upon admission and will post these rules where residents may see them easily. Centers will post these rules where practicable in Spanish and in the prominent language of most residents with LEP.

Telephone access hours also will be posted. Updated telephone and consulate lists will be posted in resident living and activity areas. Translation and interpretation services will be provided as needed.

**E. Resident Access**

Each Center Administrator will establish and oversee rules and procedures that provide residents reasonable and equitable access to telephones 24 hours a day. Telephones will be located in parts of the Center that are accessible to residents. Telephone access hours will be posted near the telephones.

**5.8 Telephone Access**

Each Center will provide residents access to international telephone service.

Ordinarily, a Center may restrict the number and duration of general telephone calls only for the following reasons.

**1. Availability**

When required by the volume of resident telephone demand, rules and procedures may include, but are not limited to, reasonable limitations on the duration and the number of calls per resident, the use of predetermined time-blocks, and institution of an advanced sign-up system.

**2. Emergencies**

Telephone privileges may be suspended entirely during an emergency, but only with the authorization of the Center Administrator or designee and only for the briefest period necessary under the circumstances. If suspension of telephone access exceeds 12 hours, then Centers must notify ICE/ERO.

**F. Direct or Free Calls**

Each Center will permit residents to make direct or free calls to the offices and individuals listed below. The JFRMU Onsite Coordinator will ensure that all information is kept current and is provided to each Center. This information will be posted in the living and activity area and the telephone area(s). A Center may place reasonable restrictions on the hours, frequency, and duration of such direct and/or free calls, but may not limit a resident's attempt to obtain legal representation. Full telephone access will be granted for a resident to contact the following:

- The EOIR including local immigration court;
- The Board of Immigration Appeals;
- Federal and State courts with jurisdiction over the particular Center, or where the resident is or may become involved in a legal proceeding;
- Consular officials;
- DHS/OIG;
- U.S. Citizenship and Immigration Services;
- The American Bar Association;
- *Pro bono* legal representatives who appear on a list supplied by EOIR serving the particular Center;
- DHS Joint Intake Center (JIC);
- ICE Office of Professional Responsibility (OPR);
- ICE Detention Reporting and Information Line;
- All legal representatives, when the purpose is to obtain legal representation;
- A resident's legal representative for any consultation related to expedited removal;

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- Legal service providers or organizations listed on the ICE/ERO free legal service provider list;
- United Nations High Commissioner for Refugees, from asylum-seekers and Stateless individuals;
- Federal, State, or local government offices to obtain documents relevant to his/her immigration case; or
- Immediate family or others for residents in personal or family emergencies or who otherwise demonstrate a compelling need (to be interpreted liberally).

Residents also will be allowed to make one telephone call within two hours of arrival for which they will not be charged.

**1. Time Requirements**

Staff will allow residents to make such calls as soon as possible after submission of requests, factoring in the urgency stated by the resident. Access will be granted within 8 business hours and will not exceed 24 hours of the request. Staff must document and report to ICE/ERO any incident of delay beyond eight waking hours.

**2. Indigent Residents**

Ordinarily, a resident is considered indigent if he/she has fewer than \$15 in his/her account. A Center will make a timely effort to determine indigence.

Indigent residents are afforded the same telephone access and privileges as other residents. Each Center will enable all residents to make calls to the ICE/ERO-provided list of free legal service providers and consulates at no charge to the resident or the receiving party. The indigent resident may request a call to immediate family or others in personal or family emergencies or on an as-needed basis.

In addition to the calls listed in the Direct or Free Telephone Calls section in this standard, indigent residents will be provided the following free telephone calls:

- One telephone call per week to immediate family;
- Telephone calls resulting from an emergency telephone message received;
- Upon request, telephone calls to established legal representatives; and
- For *pro se* indigent residents, telephone calls on an as-needed basis to family and other individuals assisting with the resident's immigration proceedings.

**3. Telephone System Limitations**

If the limitations of an existing telephone system preclude meeting these requirements, then the Center Administrator must notify ICE/ERO so that a means of telephone access may be provided.

Centers will require telephone service providers to program and keep current the telephone system.

## **G. Legal Calls**

### **1. Restrictions**

A Center may neither restrict the number of calls a resident places to his/her 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 telephones. If time limits are necessary for such calls, then they will be no shorter than 20 minutes, and the resident will be allowed to continue the call at the first available opportunity, if desired. When legal telephone calls are restricted, the JFRMU Onsite Coordinator will be notified.

A Center may place reasonable restrictions on the hours, frequency, and duration of such direct and/or free calls but may not otherwise limit a resident's attempt to obtain legal representation.

### **2. Privacy**

For resident telephone calls regarding legal matters, each Center will ensure privacy by providing a reasonable number of telephones on which residents can make such calls without being overheard by staff or other residents. Absent a court order, staff may not monitor telephone calls made in reference to legal matters.

If residents have difficulty in making a confidential call, then they should contact a Center supervisor or ICE/ERO.

The Center will inform residents to contact a staff member if they have difficulty making a confidential call relating to a legal proceeding. If notified of such a difficulty, the staff member will take measures to ensure that the call can be made confidentially.

Privacy may be provided in a number of ways, including:

- Telephones with privacy panels (side partitions) that extend at least 36 inches to prevent conversations from being overheard;
- Telephones placed where conversations may not be overheard readily by others;
- Office telephones on which residents may be permitted to make such calls; and
- Supervision of residents within eyeshot, but out of earshot.

## **H. Telephone Access for Residents with Disabilities**

The Center will provide a Telecommunications Device for the Deaf (TDD) device or Accessible Telephone (telephones equipped with volume control and telephones that are hearing-aid compatible for residents who are deaf or hard of hearing). Residents who are deaf or hard of hearing will be provided access to the TDD on the same terms as hearing residents are provided access to telephones. Except to the extent that there are time limitations, residents using the TDD will be granted additional time as needed.

Consistent with safe and secure Center operations and in accordance with the Family Residential Standard on *Disability Identification, Assessment, and Accommodation*, the Center may allow for use of other equipment such as video relay, video phones, and Internet video calls (e.g., Skype) for

**5.8 Telephone Access**

residents who are deaf or hard of hearing. Centers will permit residents with disabilities the opportunity to submit requests for the auxiliary aid of their preference.

Accommodations also will be made for residents with other disabilities.

**I. Inter-center Telephone Calls**

Upon a resident's request, Center staff will make special arrangements to permit the resident to speak by telephone with an immediate family member detained in another Center. Immediate family members include spouses, common-law spouses, parents, stepparents, foster parents, brothers, sisters, biological or adopted children, and stepchildren.

Reasonable limitations may be placed on the frequency and duration of such calls. Residents will be allowed a minimum of 1 call every 14 days. Center staff will liberally grant such requests to discuss legal matters and will afford the resident privacy to the extent practicable, while maintaining adequate security.

**J. Incoming Calls**

The Center will take and deliver telephone messages to residents within four hours of receipt.

When Center staff receives an emergency call or call related to a legal matter, the caller's name and telephone number will be obtained and promptly given to the resident as soon as possible but not to exceed two hours. The resident will be permitted to return this call promptly. The Center will enable indigent residents to make a free return emergency call.

**References**

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Correspondence and Other Mail
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Visitation
- ICE Family Residential Standard on Disability Identification, Assessment, and Accommodation

## 5.9 Visitation

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that residents will be able to maintain morale and ties through visitation with their families, the community, legal representatives, and consular officials within the constraints of safe and secure Center operations.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers are encouraged to allow residents to maintain ties to their family and friends in the community. Residents will be able to receive visits from legal representatives, consular officials, and others in the community.
2. Visits between legal representatives and assistants, independent experts assisting with a resident's legal case, and an individual resident are confidential and will not be subject to auditory supervision. Private consultation rooms will be available for such meetings.
3. Residents will be advised of their right to contact their consular representatives and receive or reject visits from their consulate staff members.
4. Centers are encouraged to provide residents with opportunities for both contact and noncontact visits (when requested) during both day and evening hours.
5. Information about visiting policies and procedures will be readily available to the public.

**5.9 Visitation**

6. Centers will only limit the number of visitors a resident may receive daily and the length of each visit due to reasonable constraints of space, scheduling, staff availability, and safe and secure Center operations. Generally, visits should be for the maximum period practicable but not less than 1 hour, with special consideration given to family circumstances and individuals who have traveled long distances.
7. To ensure safe and secure Center operations, visitors will be screened and approved upon arrival and will be required to identify themselves adequately and register prior to entrance into a Center.
8. A background check will be conducted on all new volunteers prior to their being approved to provide services to residents.
9. Each new volunteer will complete an appropriate, documented orientation program and sign an acknowledgement of his/her understanding of the applicable rules and procedures and agreement to comply with them.
10. Residents will be advised of visiting privileges and procedures in a language or manner they can understand as part of the Center's admission and orientation programs.
11. Conjugal visits are prohibited.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Visitation* dated 12/21/2007 and any other ICE Directive, policy statement, or Standard Operating Procedure specific to visitation at ICE Family Residential Centers.

## Expected Practices

### A. Overview

Centers that house ICE/Enforcement and Removal Operations (ERO) residents will establish written visitation procedures, including a visitation schedule, and designate visiting areas so that residents can maintain communication with persons in the community. Safe and secure Center operations are always primary considerations, and visitors must be identified and attired properly and are subject to search upon entering the Center and at any time while on Center premises.

Except as otherwise permitted by the FRS or Center policy, visitors may not give anything directly to a resident, although it may be permissible for visitors to leave certain items and funds for a resident with a staff member, at the discretion of the Center Administrator. An itemized receipt that lists funds and property brought for the resident will be provided to the visitor.

All visitation will be contact visitation except where a resident requests otherwise as noted in the Expected Outcome above.

Any violation of the visitation rules by the resident may result in corrective action against the resident. Violations by visitors also will be grounds for visitors to be barred from visitation



**5.9 Visitation**

temporarily or permanently. Introduction of contraband or other criminal violations may lead to criminal prosecution of a visitor, resident, or both.

As detailed in this standard, the visitation category will determine conditions of visitation, including who is permitted to visit, how many hours they may visit, their approval process to visit, and the location in the Center where they may visit. Visitation will be categorized as one of the following:

- Social visitation: Family, relatives, friends, and associates; minors may be subject to special restrictions (see the Social Visitation section in this standard);
- Legal visitation: Attorneys, other legal representatives, and legal assistants (see the Visits by Legal Representatives and Legal Assistants section in this standard);
- Consultation visitation: For residents subject to expedited removal (see the Consultation Visits for Residents Subject to Expedited Removal section in this standard);
- Consular visitation: Similar to legal visitation but with consular officials who have identification issued by the U.S. Department of State (see the Consular Visitation section in this standard);
- Community service organization (CSO) visitation: Representatives of civic, religious, cultural groups, etc. (see the Visits from Representatives of Community Service Organizations (CSOs) section in this standard);
- Other special visitation (see the Other Special Visits section in this standard); and
- Nongovernmental organization (NGO) visitation and tours (see the ICE Family Residential Standard on *News Media, Interviews, and Tours*).

**B. General**

Each Center will establish written visiting procedures and rules, including a schedule and hours of visitation, and make them available to the public.

Exceptions to this standard may be made by the Center Administrator on a case-by-case basis when warranted by compelling circumstances or individual needs or conduct in consultation with ICE/JFRMU/ERO/OPLA.

A Center Administrator may temporarily restrict visiting when necessary to ensure safe and secure Center operations. Each restriction or denial of visit, including the duration of and reasons for the restriction, will be documented in writing.

**C. Notification of Visiting Rules and Hours**

Each Center will:

- Provide written notification of visitation rules and hours in the resident handbook and/or local supplement given to each resident upon admission and post those rules and hours where residents can see them easily. Such information will be posted in all living and activity areas;

- Make the schedule, procedures, and rules available to the public, both in written form and telephonically. A live voice or recording will notify telephone callers of the rules and hours for all categories of visitation; and
- Post schedule, procedures, and notification of visitation rules and hours in the visitor waiting area in English, Spanish, and, where practicable, other languages spoken by significant segments of the resident population with limited English proficiency.

#### **D. Visitor Logs**

Each Center will maintain a log of all general visitors and a separate log of legal visitors. If the stated purpose of the visit is for Expedited Removal consultation, then the visit will be logged in the Legal Visitation Log.

Staff will record in the general visitors' log:

- The name and alien number (A-number) of the resident visited;
- The visitor's name and complete address;
- The visitor's relationship to the resident;
- The date, arrival time, and departure time; and
- Any important comments about the visit, as needed.

For legal visits, the Legal Visitation Log will note all of the above as well as the supervising attorney's name (if applicable).

#### **E. Incoming Property and Funds for Residents**

In accordance with the ICE Family Residential Standard on *Funds and Personal Property*, each Center will have written procedures regarding incoming property and money for residents.

The Center Administrator may permit a visitor to leave cash or a money order with a designated staff member for deposit in a resident's account. The staff member must provide the visitor a receipt for all money or property left at the Center. Under no circumstances may visitors give property or money directly to a resident.

The Shift Supervisor must approve all items brought for residents. The visiting room staff member may not accept articles or gifts of any kind for a resident, unless the Center Administrator and/or Shift Supervisor have approved these items in advance. Visitors will be allowed to leave resident minors small toys, books, coloring books, etc., that meet Center safety requirements.

Due to the relatively short length of stay and the fact that ICE/ERO provides all necessities, residents may receive only minimal amounts of personal property, including:

- Small religious items;
- Religious and secular reading material (soft cover);
- Correspondence;
- Legal documents and papers;

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- Pictures: 10 maximum, measuring 5 x 7 inches or smaller each;
- Prescription glasses, reading glasses, sunglasses, or contact lenses;
- Dentures;
- Medical devices;
- Personal address book or pages;
- Wedding rings;
- Telephone calling cards;
- Toys and small comfort items for resident minors;
- Other items approved by the Center Administrator; and
- Other items approved by ICE/ERO.

**F. Sanctions for Violation of Visitation and Contraband Rules**

Any violation of the visitation rules by the resident may result in corrective action against the resident, including loss of visitation privileges, excluding legal and consular visits. Visiting privileges may be revoked only through the formal resident corrective action procedures. However, the Center Administrator has the authority to restrict or suspend a resident's social visitation privileges temporarily when there is reasonable suspicion that the resident has acted in a manner constituting a threat to safe and secure Center operations. Each incident will be documented, and the restriction or suspension will be limited to the time required to investigate and initiate corrective action. Legal visitation will be suspended only if necessary to maintain safe and secure Center operations.

A visitor's failure to abide by visiting rules may result in immediate cancellation or termination of a visit and/or suspension of future visitation privileges. Visitors will acknowledge understanding of the procedures and rules by signing and dating an agreement annually or when updated. Introduction of contraband or other criminal violations may lead to criminal prosecution of a visitor, a resident, or both.

**G. Dress Codes for Visitors**

If the Center establishes and maintains a dress code for visitors, then it will be made available to the public (e.g., posted on the Center's website, as an outgoing telephone message, and included in the resident handbook and local supplement).

**H. Visiting Room Conditions**

The Center's visiting areas will be furnished and arranged appropriately and made as comfortable and pleasant as practicable. Centers also will provide activity areas that allow parents/guardians to observe their children visually while they are visiting. Centers are encouraged to provide outdoor visitation areas. Also, as practicable, space will be provided outside of the immediate visiting areas for the secure storage of visitors' coats, handbags, and other personal items.

**5.9 Visitation**

The Center Administrator will provide adequate supervision of all visiting areas, and the visiting area staff member will ensure that all visits are conducted in an orderly and dignified manner.

**I. Social Visitation****1. Hours and Time Limits**

Each Center will establish a visiting schedule based on the resident population and the demand for visits. Social visitation hours will be a minimum of eight hours a day (including evening hours), seven days a week. The Center will accommodate the scheduling needs of visitors for whom regular visiting hours pose a hardship; for example, by authorizing special visits for family visitors.

The Center may restrict visitation times for school-age residents during the school day but will have no other limitations on visits during visiting hours.

The Center's written rules will specify time limits for visits, no less than one hour, under normal conditions.

ICE/ERO encourages more generous limits when possible, especially for family members traveling significant distances. In unforeseen circumstances, such as the number of visitors exceeding visiting room capacity, the Center Administrator may modify visiting periods.

**2. Persons Allowed to Visit**

Families, relatives, friends, and associates may visit residents, unless they pose a threat to safe and secure Center operations.

Visiting minors must remain under the direct supervision of an adult visitor so as not to disturb other visitors or residents. Excessively disruptive conduct by minors may result in termination of the visit.

**3. Visitor Identification and Search Procedures**

Staff will verify each adult visitor's identity before admitting him/her to the Center. No adult visitor will be admitted without Government-issued photo identification or another form of identification when photo identification is unavailable for religious reasons. Staff will contact the supervisor on duty when a visitor's identity is in question or when the visitor does not possess required identification. At the supervisor's discretion, a minor (under 18 years of age) without required identification may be admitted if the accompanying adult visitor vouches for his/her identity. All visitors will be subject to identification and personal search.

The Center Administrator may establish a procedure for random criminal background and warrant checks for the purpose of ensuring safe and secure Center operations. If the background check reveals an unresolved issue that could compromise safe and secure Center operations, then the visitor may be denied entry. In such cases, the Center Administrator and Juvenile and Family Residential Management Unit (JFRMU) onsite representative will be notified. Visitors will not be precluded from visiting a resident solely because of a past conviction. Centers can exclude visitors based on an examination of the underlying conduct of the conviction.

Staff will escort visitors to the visiting room only after completing identification and inspection as provided in the Center's written procedures. All visitors are subject to a personal search, which may

**5.9 Visitation**

include a pat search (also known as “pat-down”) as well as a visual inspection of purses, briefcases, packages, and other containers. Minors under 14 years of age will not be subject to a pat search. Written procedures will be publicly available to inform visitors that they are subject to search procedures.

The inspecting staff member may ask the visitor to open a purse, briefcase, package, or other container for visual inspection of its contents. If warranted, the staff member may ask the visitor to remove the contents and place them on a table; however, the staff member may not place his/her hands inside the container. Visitors will be notified via signage or acknowledgement form of these procedures prior to entry to the Center. Centers will provide and promote visitors’ use of lockers or a secure area provided for safekeeping of personal belongings during visits. Persons who refuse to be searched will not be permitted to enter the Center.

In each Center, written procedures will provide for the denial, prevention, cancellation, or termination of any visit that appears to pose a threat to safe and secure Center operations. Visiting area staff members or other staff who believe a situation poses such a threat will alert the Shift Supervisor or equivalent, who may then prevent, cancel, or terminate the visit.

Only supervisory staff will have the authority to deny or cancel a visit. In those cases, the staff member will document his/her action in a memorandum sent through official channels to the Center Administrator, who will notify onsite ICE supervisory staff and the JFRMU Chief. The visiting room staff member, with concurrence from the Shift Supervisor, may terminate visits involving inappropriate behavior.

Adults must monitor their children so as not to disturb residents or other visitors. Parents/guardians may be asked to remove minors who display excessively disruptive conduct from the visitation area.

Centers will not require approved visitor lists from ICE/ERO residents.

**4. Contact Visits**

Centers will establish written procedures that detail the limits and conditions of contact visits. Ordinarily, within the bounds of propriety, handshaking, embracing, and kissing are permitted. Staff may limit physical contact only where there is reason to suspect that a visitor may be attempting to introduce contraband.

Upon exiting, searches of residents will be conducted only in accordance with the ICE Family Residential Standard on *Searches and Inspections*.

**J. Visits by Legal Representatives and Legal Assistants****1. General**

In “legal visitation” visits, each resident may meet privately with current or prospective legal representatives and their legal assistants. Legal visits may not be terminated for routine census purposes.

**5.9 Visitation****2. Hours**

Each Center will permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days (Monday through Friday), and a minimum of four hours per day on weekends and holidays. As appropriate, schedules for designated legal meeting room usage will be posted to facilitate equitable use.

The Center will provide notification of the rules and hours for legal visitation as specified above. This information will be posted prominently in the waiting areas and visiting areas and in the living and activity areas.

On regular business days, legal visitations may proceed through a scheduled meal period, and the resident will receive a tray or sack meal after the visit.

In emergency circumstances, Centers may consider requests from legal representatives for extended visits or visits outside normal Center visiting hours.

**3. Persons Allowed to Visit**

Subject to the restrictions stated below, individuals over the age of 18 and in the following categories may visit residents to discuss legal matters:

**Attorneys:** An attorney is any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under an order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him/her in the practice of law (see 8 C.F.R. § 1.2).

**Legal Representatives:** A legal representative is an attorney or other person representing another in a matter of law, including law students or law graduates not yet admitted to the bar under certain conditions, accredited representatives, and accredited officials and attorneys licensed outside the United States (see 8 C.F.R. § 292.1 for more detailed definitions of these terms).

**Legal Assistants:** Legal assistants are persons assisting attorneys and other legal representatives. Upon presentation of a letter of authorization from the legal representative under whose supervision he/she is working, an unaccompanied legal assistant may meet with a resident during legal visitation hours. The letter will state that the named legal assistant is working on behalf of the supervising legal representative for purposes of meeting with the ICE/ERO resident(s).

**Translators and Interpreters:** Centers will permit translators and interpreters to accompany legal representatives and legal assistants on legal visits, subject to the Visitor Identification and Search Procedures section in this standard.

**Messengers:** Centers will permit messengers who are not legal representatives or legal assistants to deliver documents to and from the Center, but not to visit residents except during social visitation.

All legal representatives may consult with individual residents in the designated visiting area or designated legal visitation rooms. Legal representatives are only authorized to be in the Center when they are consulting with a resident.

**5.9 Visitation****4. Identification of Legal Representatives, Legal Assistants, and Interpreters**

Prior to each visit, all legal representatives and assistants shall be required to provide appropriate identification, such as a bar card from any state, a document demonstrating partial or full accreditation from the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), or a letter of authorization from the legal representative or attorney under whose supervision the individual is working as detailed above. State bar cards are the preferred form of identification for attorneys. However, attorneys who are members of State bar associations that do not provide bar cards will be required to present other documentation that verifies their bar membership. If such documentation is not readily available to attorneys licensed in any particular State, those persons will be required to indicate where they are licensed as an attorney and how that claim may be verified.

Legal representatives and legal assistants will not be asked to state the legal subject matter of the meeting.

Legal representatives, legal assistants, and interpreters are subject to a nonintrusive search—such as a pat search of the person or a search of the person's belongings—at any time for the purpose of ascertaining the absence of contraband.

**5. Identification of Resident to Be Visited**

While identification by A-number is preferable, a Center may not require legal representatives and assistants to submit a resident's A-number as a condition of visiting. Where the legal representative or assistant provides alternative information sufficient to reasonably identify the specific resident, the Center will make a good-faith effort to locate a resident.

**6. Call-ahead Inquiries**

Each Center will establish a written procedure, which will be approved by ICE/ERO and the JFRMU Onsite Coordinator, to allow legal representatives and assistants to telephone the Center in advance of a visit to determine whether a particular individual is present at the Center. The request must be made to the onsite Center staff or to the ICE/ERO office with jurisdiction over the Center.

A minimum of 24 hours prior to a visit, legal representatives can request a scheduled date/time to consult with specific residents. In addition to the resident's information, the request should include the names of all legal representatives/assistants that will be present and their affiliated organization/business as appropriate. Given the open movement format of the FRCs, Centers will make a reasonable and good faith efforts to accommodate such requests.

When unfamiliar with the person making the inquiry, ICE/ERO staff should request documentary evidence, such as a letter on identifying letterhead, and will accept such evidence by fax.

Alternatively, at the request of the caller, Center staff may seek the consent of the resident for the disclosure of residential information. In either case, ICE/ERO staff will respond to the caller as soon as possible, but in no case more than 24 hours after the initial inquiry.



**5.9 Visitation****7. Pre-representation Meetings**

During the regular hours for legal visitation, the Center will permit residents to meet with prospective legal representatives or legal assistants. The Center will document such “pre-representation meetings” in the logbook for legal visitation.

At the “pre-representation” stage, no attorney-client relationship exists; therefore, legal representatives and assistants need not complete a Form G-28 as a condition of visiting residents for this purpose.

**8. Form G-28 and Attorney/Client Meetings**

Once an attorney-client relationship has been established, or if an attorney-client relationship already exists, the legal representative will complete and submit a Form G-28 to be placed in the resident’s alien file and residential file. Blank forms will be available in the legal visitation reception area. When received, staff will copy and send completed forms to ICE/ERO.

Attorneys representing residents on legal matters unrelated to immigration are not required to complete a Form G-28.

**9. Private Meeting Room and Interruption for Census Events**

Visits between legal representatives or legal assistants and an individual resident are confidential and will not be subject to auditory supervision. Private, designated, legal meeting rooms are available for such meetings. To preserve legal confidentiality as well as space for other forms of visitation, legal representatives and assistants may be required to meet with residents in private consultation rooms.

Legal visits may not be terminated for routine census events. However, staff members may impose reasonable and limited restrictions on legal visits (such as allotting one consultation room for use by one legal representative or legal services provider per day, or limiting individual consultations to one hour each) to maintain safe and secure Center operations and/or to ensure equitable access to the private consultation rooms for all residents and legal representatives in periods of high demand. Staff may also temporarily suspend an individual legal consultation if necessary to ensure the resident’s presence at necessary medical appointments. In this case, the resident may resume the legal visit as soon as the medical appointment is complete, or at the earliest convenience of the legal representative.

If a resident has another appointment, such as a Consulate visit, Center staff will allow the resident the opportunity to decide which appointment to attend. Center staff will document such decisions as appropriate.

Staff will not be present in the confidential area during the meeting unless the legal representative or legal assistant requests the presence of a staff member. In these cases, staff will document the request in the visitation log. In all other cases, staff may observe such meetings visually through a window or via camera to the extent necessary to maintain security, as long as staff cannot overhear any conversations.

When a situation arises in which designated legal meeting rooms are in use and the legal representative wishes to meet in an alternate visiting room, the request will be accommodated to

**5.9 Visitation**

the extent practicable, taking into consideration the orderly and secure operation of the Center. Such meetings will be afforded the greatest possible degree of privacy under the circumstances.

Upon request of a parent/guardian, during the parent's/guardian's meetings with legal representatives or assistants, Centers will provide monitored care for infants and toddlers.

**10. Materials Provided to Residents by Legal Representatives**

The Center's written legal visitation procedures must provide for the exchange of documents between a resident and the legal representative or assistant.

Documents or other written material provided to a resident during a visit with a legal representative will be inspected but not read. Residents will be entitled to retain legal material received for their personal use. Quantities of blank forms or self-help legal material in excess of those required for personal use may be held for the resident with his/her property. The resident will be permitted access to these documents upon request.

**11. Group Legal Meetings**

Upon request of a legal representative or assistant, the Center Administrator may permit a confidential meeting (with no staff member present) involving the requester and two or more residents, taking into consideration the safe and secure operation of the Center. This may occur for various purposes (e.g., pre-representational, representational, discharge-related). The Center will grant such requests to the greatest extent practicable, if it has the physical capacity and if the meeting will not interfere with safe and secure Center operations. Each Center Administrator may limit resident attendance, including the number of participants, according to the practical concerns of the Center, or the security concerns associated with the meeting in question.

See the ICE Family Residential Standard on *Legal Rights Group Presentations* for additional information.

**12. ICE/ERO-provided List of Free Legal Service Providers and Resident Sign-up**

ICE/ERO will provide Centers with the U.S. Department of Justice Executive Office for Immigration Review (EOIR) list of local *pro bono* legal service providers. This list is updated quarterly by EOIR. Centers will promptly and prominently post the current list in Center living and activity areas.

Any legal organization or individual on the current list may submit a request to the Center Administrator to post and/or circulate a sign-up sheet on their behalf among the general Center population.

The Center Administrator then will notify residents of the availability of the sign-up sheet and, according to established procedures, coordinate with the *pro bono* organization or individual.

**13. Legal Visitation Log**

Staff will maintain a separate log to record all legal visitors, including those denied access to the resident. The log will include the reason(s) for denying access.

Log entries will include the following information:

- Date;

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- Time of arrival and departure;
- Visitor's name;
- Visitor's complete address;
- Supervising attorney's name (if applicable);
- Resident's name and A-number;
- Whether the resident currently has a Form G-28 on file;
- Time visit began; and
- Time visit ended.

Staff also will record any important comments about the visit.

**14. Availability of Legal Visitation Policy**

The Center's written legal visitation policy will be available upon request and by telephone, published in the resident handbook and local supplement, and posted in the living and activity areas, Resident Information Center, visitation area, and lobby. The site-specific policy will specify visitation hours, procedures, and standards; and address, at a minimum, the following:

- Telephone inquiries;
- Dress code;
- Legal assistants working under the supervision of an attorney;
- Pre-representational meetings;
- Form G-28;
- Identification and search of legal representatives;
- Identification of visitors;
- Materials provided to residents by legal representatives;
- Confidential group legal meetings;
- Resident sign-up; and
- The *pro bono* sign-up process.

**K. Consultation Visits for Residents Subject to Expedited Removal****1. General**

Residents who are subject to expedited removal and who have been referred to an asylum officer are entitled by statute and regulation to consult with persons of the resident's choosing, both prior to the interview and while the asylum officer's decision is under review. Such consultation visitation is for the general purpose of discussing immigration matters, not for purely social visits covered earlier.

**5.9 Visitation**

The consultation visitation period begins before any interview with an asylum officer and continues while the asylum officer's determination is under review by the supervisory asylum officer or immigration judge.

The consultation visitation period ends with the issuance of a Notice to Appear and once the resident is placed in removal proceedings before an immigration judge; however, the resident retains legal and other visitation privileges in accordance with this standard.

"Consultation visitation" may neither incur government expense nor unduly delay the discharge process.

**2. Method of Consultation**

Because expedited removal procedures occur within short timeframes, each Center will develop procedures that liberally allow for consultation visitation, to ensure compliance with statutory and regulatory requirements and to prevent delay in the expedited removal process. Given the time constraints, consultation by mail is highly discouraged.

Center staff will ensure that consultation, whether in person, by telephone, or by electronic means, proceeds without hindrance during credible fear proceedings. Staff will be sensitive to individual circumstances when resolving consultation-related issues.

Consultation visitation will be allowed during legal visitation hours and during general visitation hours. The Center Administrator will increase consultation visiting hours if needed to meet demand while ensuring safe and secure center operations.

**3. Persons Allowed to Visit for Consultation Purposes**

Residents subject to expedited removal may request and receive consultation with whomever they choose, in person, by telephone, or by other electronic means during credible fear proceedings. Consultants might include, but are not limited to, attorneys and other legal representatives, prospective legal representatives, legal assistants, members of NGOs, friends, and family.

Consultants are subject to the same identification and security screening procedures as general visitors. If documented security concerns preclude an in-person visit with a particular individual, then the Center Administrator will arrange for consultation by telephone or other electronic means. If security reasons also preclude consultation by telephone or other electronic means, then the Center Administrator, through the Field Office Director (FOD), will consult the Office of the Principal Legal Advisor.

Upon resident request, expedited removal consultants may be present during the resident's asylum interview. At the judge's discretion, expedited removal consultants also may be present during negative credible fear determination reviews.

The Center Administrator may verify the validity of a consultation visit request; however, they will not delay the visit pending verification.

**4. Privacy**

Consultation visits, whether in person, by telephone, or other electronic means, will receive the same privacy as communications between legal representatives and residents.

**5.9 Visitation****5. Admittance for Asylum Officer Interview**

Residents subject to expedited removal may bring and consult advisors during the asylum officer interview. The presence of persons to consult also is allowed during the immigration judge's review of a negative credible fear determination, at the judge's discretion.

**6. Log**

Staff will record consultation visits in the legal visitation log.

**7. Form G-28 for Consultation Visits**

Visitors are not required to file a Form G-28 to participate in a consultation visit or provide consultation during an asylum officer interview or immigration judge's review of a negative credible fear determination. This applies even if the visitor is an attorney or legal representative.

**8. Other Considerations for Consultation Visits**

The procedures described in the Visits by Legal Representatives and Legal Assistants section in this standard apply to other considerations in regard to consultation visits such as the following:

- Group consultations;
- Call-ahead inquiries;
- Searches;
- Resident identification;
- Materials provided to residents by the visitor;
- Consultation visits for residents in administrative and disciplinary isolation;
- *Pro bono* list and resident sign-up; and
- Availability of consultation visitation policy.

**L. Consular Visitation**

According to international agreements and under regulation 8 C.F.R. § 236.1, residents must be advised of their right to consular access and ICE/ERO will facilitate the resident's access to consular officers. ICE/ERO policy and practice stipulate that all residents be provided with notice, through the Center Administrator, in a language or manner that they understand, of their right to contact their consular representatives and receive visits from their consular officers. This information will be provided during intake orientation and in the resident handbook and local supplement, as appropriate.

The Center Administrator will ensure that all residents are notified of and afforded the right to contact and receive visits from their consular officers. The same hours, privacy, and conditions that govern legal visitation apply to consular visitation. Consular visits may be permitted at additional times outside normal visitation hours, with the Center Administrator's prior authorization.

To conduct such visits, consular officers must present U.S. State Department-issued identification.

**5.9 Visitation****M. Visits from Representatives of Community Service Organizations (CSOs)**

The Center Administrator, in consultation with the FOD and JFRMU Chief, may approve visits to one or more residents by individuals or groups representing CSOs, including civic, religious, cultural, therapeutic, and other groups. Volunteers may provide a special religious, educational, therapeutic, or recreational activity.

The Center Administrator's approval will take into account factors such as:

- Safety and security considerations;
- Availability of personnel to supervise the activity; and
- Sufficient advance notification to the Center Administrator.

Residents' immediate family and other relatives, friends, and associates, as detailed in the Persons Allowed to Visit section in this standard, may not serve as volunteers.

To inform the Center Administrator's decision, Center staff (such as Chaplains and recreation specialists) will verify the organization's bona fide interests and qualifications for this kind of service.

Groups and/or individuals from those groups must:

- Provide the Center with advance notification of the names, dates of birth, and social security numbers or unexpired passport numbers of the group members who will be visiting;
- Submit to a background check: All volunteers, regardless of title or position, are subject to a background check that includes, but is not limited to, a criminal history check, verification of identity and occupation, and verification of credentials for the type of activity involved;
- Provide identification for individual members of the group upon arrival at the Center; and
- Comply with visitation rules: Each approved volunteer will receive an appropriate orientation to the Center and will acknowledge his/her understanding of rules and procedures by signing an agreement to comply with them, particularly in regard to permissible behavior and relationships with residents.

The orientation and signed agreement will, at a minimum:

- Specify lines of authority, responsibility, and accountability for volunteers; and
- Prohibit volunteers from:
  - Using their official positions to secure privileges for themselves or others;
  - Engaging in activities that constitute a conflict of interest; and
  - Accepting any gift from or engaging in personal business transactions with a resident or a resident's immediate family.

All volunteers will be held accountable for compliance with the rules and procedures and must:

**5.9 Visitation**

- Read and sign a waiver of liability that releases ICE/ERO from all responsibility in case of injury during the visit before being admitted to any secure portion of the Center or location where residents are present; and
- Comply with requirements listed in this standard.

**N. Other Special Visits****1. Law Enforcement Officials' Visits**

Center visitation procedures will cover law enforcement officials requesting interviews with residents. Centers will notify and seek approval from ICE/ERO of any proposed law enforcement officer visit with a resident.

**2. Visitation by Former Residents or Residents in Proceedings**

Former ICE/ERO residents, individuals with criminal records, and individuals in deportation proceedings will not be excluded automatically from visitation. Individuals in any of these categories must request permission from the Center Administrator before registering for visitation privileges. The Center Administrator will weigh the nature and extent of an individual's criminal record and/or prior conduct against the benefits of visitation in determining visitation privileges. A potential visitor's failure to disclose such matters may preclude visitation privileges. The Center Administrator will notify the FOD and JFRMU Chief when these requests are denied.

**3. Business Visitors**

A resident may not actively engage in business or professional interests or activities; however, in the event that a resident must make a decision that will affect the assets or prospects of a business substantially, the Center Administrator may permit a special visit.

ICE/ERO does not recognize or sanction any work-release program.

**4. Independent Medical Service Providers and Experts**

A resident or his/her legal representative may seek an independent medical or mental health examination to develop information useful in administrative proceedings, in accordance with the section on "Examinations by Independent Medical Service Providers and Experts" found in the family residential standard on Medical Care. Once the FOD has approved the request for an independent examination, the Center will provide a location for the examination but no medical equipment or supplies and the examination must be arranged and conducted in a manner consistent with maintaining safe and secure Center operations.

**5. Visiting Rules Regarding Animals**

Each Center will establish and disseminate a policy and implement procedures governing whether and, if so, under what circumstances animals may accompany human visitors onto or into Center property. However, service animals will be permitted to accompany all persons with disabilities.

*Note:* News media interviews and tours are outlined in the ICE Family Residential Standard on *News Media, Interviews, and Tours*.



**5.9 Visitation****References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on Legal Rights Group Presentations
- ICE Family Residential Standard on News Media, Interviews, and Tours
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Searches and Inspections

# 6.1 Resident Handbook

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard requires that, upon admission, every resident be provided comprehensive written orientation materials that describe matters such as the Center's rules and sanctions, mail and visiting procedures, grievance system, services, programs, food service, and medical care, in English, Spanish, and other languages as directed by the Field Office Director (FOD). Residents will acknowledge receipt of those materials. Centers may provide a local handbook, national handbook, or combination. Throughout this standard, "resident handbook" will refer to either the ICE national handbook, local supplement, or combination provided by the Center.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Upon admission to a Center, each resident 14 years of age and older will be provided the comprehensive written orientation materials in the form of a resident handbook. The resident handbook will notify residents of key ICE Family Residential Standards provisions and services provided at the Center.
2. Each resident will verify, by signature and date, receipt of those orientation materials, and that acknowledgement will be maintained in the resident's file. Centers will require adult residents to explain the contents of the resident handbook to their children under 14 years of age.

**6.1 Resident Handbook**

3. The resident handbook will be provided to residents in English, Spanish, and other predominant languages as determined necessary by the FOD. The Center Administrator will ensure that the Center has sufficient quantities in each language, and will request additional copies of the resident handbook from the FOD as needed.

## Standards Affected

Not applicable. This is a new standard.

## Expected Practices

### A. General

For consistency among Centers, the resident handbook will be used as a comprehensive orientation resource and will include Center-provided information specific to that Center's operations. All items will be in compliance with this standard and will be approved by the FOD and Juvenile and Family Residential Management Unit Chief prior to distribution.

Centers will require adult residents to explain the contents of the resident handbook to their children under 14 years of age.

For residents who cannot read or do not understand the language of the handbook, the Center Administrator will arrange for the handbook materials to be read to the resident or will provide the material using audio or video tapes in a language or manner the resident understands.

### B. Content

Resident handbooks must specifically address the following topics related to the ICE Family Residential Standards:

**Housekeeping:** Center requirements for keeping personal areas neat.

**Contraband:** Description of hard and soft contraband items, Center policy, and procedures for searches and inspections.

**Admission Process:** Overview of process, questions that will be asked, medical screenings and items that will be distributed (clothing, bedding etc.), orientation, and bedroom assignments.

**Funds and Personal Property:**

- The list of personal items that residents may retain in their possession;
- The procedure to access stored property;
- The description of documentation on each resident retained by either the Center or ICE, and the procedure for requesting copies, to include certified copies of any identity document (passport, birth certificate, etc.) placed in their alien files or resident files;
- The rules for storing or mailing property not allowed in their possession at the Center;
- The procedure for receiving their property upon discharge, transfer, or removal;

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- The procedure for filing a claim for lost or damaged property;
- The procedure for accessing information contained on electronic media such as personal cell phones or computers belonging to the resident;
- The procedure for accessing resident personal funds; and
- The procedure for reporting missing or damaged property.

**Resident Census:** Procedures for both parents/guardians and their children for both routine and emergency census.

**Sexual Abuse and Assault Prevention and Intervention (SAAPI):** The Center's SAAPI resident program notification will include, at a minimum:

- The Center's zero-tolerance policy for all forms of sexual abuse and/or assault (SAA);
- Prevention and intervention strategies;
- Definitions and examples of resident-on-resident SAA and coercive sexual activity;
- Explanation of methods for reporting SAA, including one or more staff members other than immediate point-of-contact line staff, the Detention and Reporting Information Line, the U.S. Department of Homeland Security (DHS)/Office of the Inspector General (OIG) and the ICE/Office of Professional Responsibility investigation processes;
- Information about self-protection and indicators of SAA;
- Prohibition against retaliation, including an explanation that reporting SAA will not impact the resident's immigration proceedings negatively; and
- Resident treatment and counseling rights for residents who have been subjected to SAA.

**Staff-Resident Communication:** Staff-resident communication instructions, including:

- Center staff roles;
- The procedures for informal contact with Center managerial and supervisory staff;
- The procedure for requesting programming or services;
- The procedures for contacting the ICE/Enforcement and Removal Operations (ERO) Field Office staff;
- Contact information for other Federal offices to include the OIG;
- The location of the Resident Information Center;
- Town hall meetings; and
- Assignment and role of case managers.

**Behavior Management:**

- Expectations for parents/guardians and children;
- Prohibited acts and sanctions, disciplinary process, and the procedure for appeal; and

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- Behavioral interventions for children.

**Food Service:** Mealtimes, snacks, and the process for obtaining religious or other special dietary requests.

**Medical and Mental Health Care:** Procedures for accessing medical and mental health care, medical/mental health assessments, emergencies, sick call, dental, counseling, medications, and obtaining medical records.

**Advanced Directives:** Process for obtaining medical advanced directives.

**Personal Hygiene:** Key personal hygiene information and laundry policies and procedures, if any. The processes for obtaining and exchanging clothing, linens, and obtaining hygiene items, hair care/barber services.

**Education:** Description of class attendance requirements for minors 4 to 17 years of age, assessments, parent/guardian-teacher conferences, and reports. In addition, adult classes, such as English as a Second Language will be included.

**Correspondence and Other Mail:** At a minimum, the notification will include the following:

- That residents may send and receive mail, both written and electronically;
- The procedure for sending mail both written and electronically, and instructions on how outgoing mail must be addressed;
- The Center mailing address and instructions on how incoming mail must be addressed;
- The process for inspecting general correspondence and other mail addressed to residents;
- The definition of special correspondence, which will include instructions on the proper way to label mail as SPECIAL CORRESPONDENCE;
- That special correspondence may be opened only in the resident's presence, and may be inspected for contraband, but not read;
- That a mechanism exists to send or receive packages and a description of that procedure;
- A description of the type of mail that may be rejected (e.g., explosive manufacturing information) or the type of mail that residents may not keep in their possession at the Center (e.g., clothing not in accordance with the Center dress code);
- That identity documents (passports, birth certificates, etc.) mailed to the resident will be turned over to ICE/ERO. Residents may request that ICE/ERO provide them a certified true copy of each document;
- The procedure for obtaining writing instruments, paper, and envelopes; and
- The procedure for purchasing postage along with the rules and procedures for providing indigent and certain other residents free postage.

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**Escorted Trips for Non-medical Emergencies:** Process that will be followed if a resident requires an escorted trip and the types of trips that are permissible.

**Marriage Requests:** The marriage request policy and procedure.

**Recreation:** Free movement, programs available, and schedule.

**Religious Practices:** Religious program schedule, access, rights, and religious property that can be kept in a resident's possession.

**Telephone Access:** Telephone access policy and procedure including services for indigent residents. Notice that generally, resident calls will not be monitored, but that in certain limited or exceptional circumstances, a telephone call may be monitored to ensure the safety and security of staff, residents, and the Center. Process for receiving messages and contacting family at other ICE facilities.

**Visitation:** Rules and hours, and resident rights for social, legal, and consular visitation.

**Voluntary Work Program:** Instructions for obtaining voluntary work program assignments.

**Grievance System:**

- The right to file a grievance, including medical grievance, both informally and formally;
- The expectation that, to the greatest extent possible, complaints and grievances will be handled orally and informally by staff in their daily interactions with residents (at all times, the residents will retain their right to file a formal grievance and pursue the formal grievance process);
- The process for filing an emergency and sensitive grievance;
- The procedures for filing and resolving a grievance, including the availability of assistance in preparing a grievance;
- The procedures for filing and resolving an appeal, including the right to appeal to specified higher levels if the resident disagrees with the lower decision; procedures for contacting the FOD to appeal a grievance and decision of the Center Administrator;
- The policy prohibiting staff from harassing, disciplining, punishing, or otherwise retaliating against any resident for filing a grievance or contacting the DHS/OIG; and
- The opportunity at any point to file a complaint about staff misconduct directly to the DHS/OIG by calling the DHS/OIG Hotline at 800-323-8603 or by writing to:

U.S. Department of Homeland Security

245 Murray Drive, S.W., Building 410

Washington, DC 20528

Attn: Office of Inspector General

Online Complaints can be submitted: <https://hotline.oig.dhs.gov>

**Law Libraries and Legal Material:** The rules and procedures governing access to legal materials, including the following information:

- That a law library is available for each resident's use;

**6.1 Resident Handbook**

- The scheduled hours of access to the law library;
- The procedure for requesting additional time in the law library;
- External storage devices and photocopying;
- Access to notary public;
- The procedure for requesting legal reference materials not maintained in the law library; and
- The procedure for notifying a designated employee that library material is missing or damaged.

**Legal Rights Group Presentations:** The legal rights group presentation policy and procedure.

**Resident Transfers:** Process that will be followed if a resident is transferred to another Center.

**Resident Legal Rights:** Description of each resident's legal rights, to include access to legal representation, legal visitation, the law library, and other legal resources available. Section also will include a description of appropriate legal processes that the resident may experience while in residence.

**Disability Rights and Language Access:** Description of and instruction for obtaining services for those who do not speak English or who have a disability.

**Monitored Care for Children:** Services, hours, circumstances, and process for receiving monitored care for resident children.

**Rules, Regulations, and Procedures with which Every Resident Must Comply:** Specific detail as to the rules that residents must abide by while in residence including Center identification requirements, dress code, overnight checks, emergency procedures, and ensuring safe and secure Center operations.

**Resident Rights:** Description of the rights afforded to all residents.

**Philosophy of Center Operations and Family Unity:** Description of the Family Residential program and how it promotes family unity in a family-friendly environment.

**Reporting Procedures:** Instructions for reporting allegations of abuse, civil rights violations, and staff member misconduct directly to ICE/ERO Headquarters or the DHS/OIG.

**Specific Information for Minors:** Detailed information about programming specific to residents under the age of 18.

## **C. Distribution**

Upon admission but before being placed into general population, each resident 14 years of age and older will be provided a resident handbook.

Staff will require each resident to verify, by signature, receipt of the handbook, and maintain that acknowledgement in the residential file.



**6.1 Resident Handbook**

The Center Administrator will provide a copy of the resident handbook to every staff member, contractor, and volunteer who has direct contact with residents, and will review handbook contents in initial and annual staff training.

**D. Translations and Access for Limited English Proficient Residents**

The resident handbook will be provided in English, Spanish, and other predominant languages as determined necessary by the FOD. The Center Administrator will ensure that the Center has sufficient quantities of the English and all translated versions of the resident handbook, and will request additional copies of the resident handbook from the FOD as needed.

If a resident cannot read or does not understand the language of the handbook, then the Center Administrator will provide the material using audio or video tapes in a language the resident does understand, arrange for the orientation materials to be read to the resident, or provide a translator or interpreter within a reasonable amount of time.

**E. Updates**

Centers will review the resident handbook at least quarterly and update as necessary. Although the resident handbook does not have to be revised and reprinted immediately to incorporate every change, the Center Administrator will establish procedures for communicating such changes immediately to staff and residents through methods including but not limited to the following:

- Posting changes at the Resident Information Center;
- Notifying Center staff by memos and other means; and
- Providing copies of the changes made since the last revision to new arrivals during orientation.

On occasion, ICE/ERO may require a specific and immediate change to the resident handbook.

**References**

- ICE Family Residential Standard on Behavior Management
- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Contraband
- ICE Family Residential Standard on Correspondence and Other Mail
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on Grievance System
- ICE Family Residential Standard on Law Libraries and Legal Material
- ICE Family Residential Standard on Legal Rights Group Presentations
- ICE Family Residential Standard on Marriage Requests

**6.1 Resident Handbook**

- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Personal Hygiene
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Staff-Resident Communication
- ICE Family Residential Standard on Sexual Abuse and Assault Prevention and Intervention
- ICE Family Residential Standard on Telephone Access
- ICE Family Residential Standard on Visitation
- ICE Family Residential Standard on Staff Training

## 6.2 Grievance System

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects a resident's rights and ensures that all residents are treated fairly by providing a procedure for them to file both informal and formal grievances, which will receive timely responses relating to any aspect of their residency, including medical care.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. In their daily interaction, staff and residents mutually will resolve most complaints and grievances orally and informally.
2. Residents will be able to file formal grievances, including medical grievances, and will receive written responses, including the basis for the decision, in a timely manner.
3. Residents will be able to file emergency grievances for incidents that involve an immediate threat to health, safety, or welfare, and will receive written responses, including the basis for the decision, in a timely manner.
4. Residents will be able to appeal initial decisions on grievances through the established process up to and including appealing to the Center Administrator. Centers will allow any ICE/Enforcement and Removal Operations (ERO) resident dissatisfied with the Center's response to a grievance or those fearing retaliation to be able to appeal or communicate directly with ICE/ERO.

**6.2 Grievance System**

5. Accurate records will be maintained for filed grievances and their resolution in a grievance log and the resident's file.
6. No resident will be harassed, disciplined, punished, or otherwise retaliated against for filing a complaint or grievance.
7. The Center will accommodate the special assistance needs of residents in preparing and pursuing a grievance.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Grievance System* dated 12/21/2007.

## Expected Practices

### A. Written Procedures Required

Each Center will have written policy and procedures for a resident grievance system that:

- Establish a procedure for any resident to file an informal or formal grievance;
- Establish a procedure to track or log all resident grievances;
- Establish reasonable time limits for:
  - Receiving, delivering, processing, investigating, and responding to grievances;
  - Convening a grievance committee (or actions of a single designated grievance staff member) to review formal complaints; and
  - Providing written responses to residents who filed formal grievances, including the basis for the decision.
- Ensure a procedure in which all medical grievances are received by the Center's Health Services Administrator (HSA) within 24 hours or the next business day, with a response from medical staff within 5 working days, where practicable;
- Establish a special procedure for time-sensitive, emergency grievances, including having a mechanism by which emergency medical grievances are screened as soon as practicable by appropriate medical personnel;
- Establish a special procedure for the delivery and review of sensitive grievances;
- Ensure each grievance receives appropriate review;
- Provide at least one level of independent appeal that excludes individuals previously involved in the decision-making process for the same grievance;
- Include guarantees against reprisal;
- Ensure information, advice, and directions are provided to residents in a language or manner they can understand, or that interpretation/translation services are used; and

**6.2 Grievance System**

- Provide for assistance to residents with impairments or disabilities, translation services for residents who have limited English proficiency, and assistance for residents with limited literacy when filing both informal and formal grievances.

**B. Informing Residents about Grievance Procedures**

The Center will provide each resident, upon admission, a copy of the resident handbook and local supplement (see also the ICE Family Residential Standard on *Resident Handbook*), in which the grievance section provides notice of the following:

- The right to file a grievance, including medical grievances, both informally and formally;
- The expectation that, to the greatest extent possible, complaints and grievances will be handled orally and informally by staff in their daily interaction with residents (at all times, the resident will retain the right to file a formal grievance and pursue the formal grievance process);
- The process for filing emergency or sensitive grievances;
- The procedures for filing and resolving a grievance, including the availability of assistance in preparing a grievance;
- The procedures for filing and resolving an appeal, including the right to appeal to specified higher levels if the resident disagrees with the lower decisions;
- The procedures for contacting the Field Office Director (FOD) to appeal a grievance decision;
- The policy prohibiting staff from harassing, disciplining, punishing, or otherwise retaliating against any resident for filing a grievance or contacting the U.S. Department of Homeland Security (DHS)/Office of the Inspector General (OIG); and
- The opportunity at any point to file a complaint directly to the DHS/OIG about staff misconduct, physical or sexual abuse, or civil rights violations; complaints may be filed by calling the DHS/OIG Hotline at 800-323-8603 or by writing to:

U.S. Department of Homeland Security

245 Murray Drive, S.E., Building 410

Washington, DC 20538

Attn: Office of Inspector General

Email to: [DHSOIGHOTLINE@DHS.GOV](mailto:DHSOIGHOTLINE@DHS.GOV)

**C. Grievance Types****1. Informal Grievances**

Informal grievance resolution offers a resident the opportunity to resolve his/her cause for complaint expediently before resorting to the more time-consuming written formal procedure. Staff at every Center will make every effort to resolve a resident's complaint or grievance at the lowest level possible, in an orderly and timely manner.

**6.2 Grievance System**

The Center Administrator or designee will establish written procedures for residents to present their issue of concern orally and informally (as addressed in the ICE Family Residential Standard on *Staff-Resident Communication*). Center staff is encouraged to provide assistance if a resident cannot communicate their concern properly.

A resident is free to bypass or terminate the informal grievance process at any point and proceed directly to the formal grievance stage.

If an informal grievance is resolved, then the employee need not provide the resident written confirmation of the outcome, but will document the result for the record in the resident's file and in any logs or data systems the Center has established to track such actions.

Staff members who receive a resident's informal complaint or grievance will:

- Attempt to resolve the issue informally, if the issue is within his/her scope of responsibility; or
- Notify the appropriate supervisor of the grievance as soon as practical.

The supervisor may try to resolve the matter or advise the resident to initiate a written grievance.

If the issue cannot be resolved to the resident's satisfaction, then the supervisor will advise the resident to initiate a written grievance.

**2. Emergency Grievances**

Each Center will implement procedures for identifying and processing time-sensitive emergency grievances that involve an immediate threat to a resident's safety or welfare. The resident may elect to present his/her emergency grievance to any Center or ICE/ERO staff. Once the receiving staff member who is approached by a resident determines that he/she is, in fact, raising an issue requiring urgent attention, emergency grievance procedures will apply.

The emergency grievance procedures will instruct the staff member to bring the matter to the Center Administrator and ICE/ERO, even if it is determined later that the issue is not a true emergency (and the grievance subsequently is routed through normal, non-emergency channels). All emergency grievances will receive immediate attention, and will, at a minimum, be reviewed by the Center Administrator. Responsibility for these reviews will not be delegated.

All staff will be trained to respond appropriately and in an expeditious manner to emergency grievances.

When emergency grievances are presented orally, a report of the grievance, including the nature of the complaint, the name of the resident, and the action taken to resolve the issue will be prepared in written form and forwarded to the Center Administrator and ICE/ERO.

All emergency grievance reports, to include the circumstances of the grievance and the resolution, will be placed in the resident's file and documented in the Center's grievance log. Emergency medical grievance documentation will be placed solely in the resident's medical file and documented in the Center's grievance log.

Emergency medical grievances will be brought to the immediate attention of the Center HSA or Clinical Medical Authority (CMA) for further assessment and resolution. A copy will be provided

**6.2 Grievance System**

simultaneously to the Center Administrator. If it is determined that it is not a medical emergency, then standard grievance procedures will apply.

**3. Formal Written Grievances**

The resident may file a formal grievance at any time during, after, or in lieu of lodging an informal complaint. The Center may not impose a time limit on when a resident may submit a formal grievance.

A supply of grievance forms will be available in each living and activity area, along with a locked box where residents may deposit grievances. The Center's Grievance Services Manager (GSM) will collect grievances on a daily basis.

Each Center will establish three levels of formal grievance review. These reviews will consist of:

- GSM review;
- Grievance appeals panel (GAP) review; and
- Appellate review. ICE will issue guidance on the designation of representatives and additional guidelines for conducting hearings.

**Grievance Procedure Guidelines.** Staff will advise residents that a grievance form may cover a single complaint, or a cluster of closely related issues that fall under a single subject. Each form should state clearly the resident's issues of concern; otherwise, the form will be returned to the resident for clarification.

To prepare a grievance, a resident may obtain assistance from another resident, the housing staff member or other Center staff, family members, or legal representatives. Staff will take reasonable steps to expedite requests for assistance from these other parties.

Residents may not submit a grievance on another resident's behalf, except for a parent/guardian on behalf of his/her child.

Each grievance form will be delivered to the GSM within 24 hours by authorized Center personnel (not residents) without being read, altered, or delayed.

**4. Medical Grievances**

Formal written grievances regarding medical care will follow the same procedures per the Formal Written Grievances section in this standard, and will be submitted directly to the Center's HSA. Medical grievances may be submitted in a sealed envelope clearly marked "MEDICALLY SENSITIVE."

The HSA will act on the grievance within five working days of receipt and provide the resident a written response of the decision and the rationale. This record will be maintained per the Recordkeeping and File Maintenance section in this standard.

The HSA will adjudicate medical grievances within five working days of receipt and provide the resident a written response of the decision and rationale. Residents may file an appeal of the medical grievance decision to the GAP. All medical grievances and decisions will be reported to the FOD and Juvenile and Family Residential Management Unit (JFRMU) Chief.



**6.2 Grievance System****5. Sensitive Grievances**

Centers will develop a method for processing sensitive grievances that allow the resident to bypass normal levels of review. If the resident claims that the issue is sensitive or that his/her safety or well-being may be jeopardized if others in the Center learn of the grievance, then the resident will:

- Complete the form as required;
- Describe in the grievance the reason for circumventing standard procedures; and
- Seal the grievance in an envelope clearly marked by the resident as “SENSITIVE” or “MEDICALLY SENSITIVE,” as appropriate and place the envelope in the box.

Upon receipt of an envelope marked sensitive, the GSM will log, identify as sensitive, and deliver the grievance to the Center Administrator or HSA/CMA as appropriate for resolution within the normal grievance response timeframe.

**D. Grievance Process**

**GSM Review.** The designated GSM will conduct the initial adjudication of a formal or informal grievance. The GSM will provide the resident an oral and written response within five days of grievance receipt. The GSM or designee will note the following information in the grievance log:

- Date the grievance was filed;
- Name of the resident who filed the grievance;
- The name of the GSM who conducted the initial adjudication;
- Nature of the grievance;
- Date the decision was provided to the resident; and
- Outcome of the adjudication.

**GAP Review.** Centers will inform residents of their option to file an appeal with a GAP if they are dissatisfied with a GSM decision. The JFRMU Onsite Coordinator or other ICE/ERO designee will chair the GAP.

The designated members of the GAP, as determined by the FOD, will review and provide a decision on the grievance within five days of receipt of the appeal. The GAP will not include any individuals named in the grievance.

The GAP will issue a written decision to the resident in all cases. The GAP will note the following information in the grievance log:

- Date the appeal was filed;
- Name of the resident who filed the grievance;
- Nature of the grievance;
- Name of the GSM who conducted the initial adjudication;
- Date the decision was provided to the resident; and

**6.2 Grievance System**

- Outcome of the adjudication.

Officials previously involved in adjudicating the grievance will not participate on the GAP. If the grievance involves a medical issue, then at least one member of the GAP will be a member of the Center's medical team.

If the outcome of the appeal is unfavorable to the resident, then the GAP will forward the grievance and all supporting documentation to the Center Administrator within 24 hours of issuing a decision.

**Appellate Review.** Centers will inform residents of their option to file an appeal if they are dissatisfied with a GAP decision. The Center Administrator, in some cases in conjunction with the FOD and JFRMU Chief, will review the grievance appeal and issue a decision within five days of receipt of the appeal. A written decision will be issued to the resident in all cases and forwarded to the FOD and JFRMU Chief.

The appellate reviewer will note the following information in the grievance log:

- Date the appeal was received;
- Name of the resident who filed the grievance;
- Nature of the grievance;
- Basis of the GAP decision;
- Date the decision was provided to the resident; and
- Outcome of the adjudication.

Centers will allow any ICE/ERO resident dissatisfied with the Center's response to a grievance or those fearing retaliation to be able to appeal or communicate directly with ICE/ERO.

For GAP decisions related to a medical grievance, the Center Administrator will consult with an independent medical authority prior to rendering a decision.

**E. Special Provisions for Sexual Abuse and Assault Grievances**

The Center will permit a resident to file a formal grievance related to sexual abuse and/or assault (SAA) at any time during, after, or in lieu of lodging an informal grievance or complaint.

The Center will not impose a time limit on when a resident may submit a grievance regarding an allegation of SAA.

The Center will implement written procedures for identifying and handling time-sensitive grievances that involve an immediate threat to resident health, safety, or welfare related to SAA.

The Center will issue a decision on the grievance within 5 calendar days of receipt and will respond to an appeal of the grievance decision within 30 calendar days. Centers will send all grievances related to SAA and the Center's decisions with respect to such grievances to the appropriate FOD at the end of the grievance process.

**6.2 Grievance System**

To prepare a grievance, a resident may obtain assistance from another resident, the housing staff or other Center staff, family members, or legal representatives. Staff shall take reasonable steps to expedite requests for assistance from these other parties.

**F. Recordkeeping and File Maintenance**

Each Center will maintain a resident grievance log that will be subject to regular inspection by the FOD and ICE headquarters staff. The logs will be maintained for three years. Documentation will include the following information:

- Date the grievance was filed;
- Name of the resident who filed the grievance;
- Nature of the grievance;
- Relevant ICE Family Residential Standard;
- Date the decision was provided to the resident; and
- Outcome of the adjudication.

Medical grievances will be maintained in the resident's medical file.

Center staff will assign each grievance a log number, enter it in the space provided on the grievance form, and record it in the resident grievance log in chronological order, according to the following stipulations:

- The log entry number and the resident grievance number must match;
- The log will include the receipt date and the disposition date; and
- Nuisance or petty grievances and grievances rejected or denied also must be logged with the appropriate notation and justification (e.g., "petty").

A copy of the grievance disposition will be placed in the resident's file and provided to the resident in his/her native language within five days.

ICE may audit grievance logs and individual cases quarterly to ensure compliance with the established grievance procedures and to assess the implementation of decisions within the Center. The ICE Office of Professional Responsibility (OPR) may conduct trend analyses to determine the nature of grievances being filed across ICE Centers, resources expended on their resolution, and outcomes.

**G. Established Pattern of Abuse of the Grievance System**

If a resident establishes a pattern of filing nuisance complaints or is otherwise abusing the grievance system, then the Center Administrator may identify that person, in writing, as one for whom not all subsequent complaints must be fully processed. However, feedback will be provided to the resident, and records will be maintained of rejected grievances.

**6.2 Grievance System**

For a resident so identified by the Center Administrator:

- Staff will continue to attempt to resolve all informal oral grievances at the lowest level possible, as described in this section;
- If designated staff at the Center's first grievance system level make the initial determination that the grievance is one that should not be fully processed due to its frivolous nature, then they will forward the grievance to the next grievance level;
- If staff at that level concurs that the grievance is frivolous, then the grievance will be logged in the resident grievance log showing the disposition (*e.g.*, "rejected"), and a copy of the grievance will be placed in the resident's file;
- The Center's written policy and procedures also may require that each rejected grievance be forwarded to the Center Administrator for review or concurrence;
- The designated final authority may decide to return the grievance to a lower level for full processing;
- Written notification will be provided to the resident no more than five days after the Center Administrator's decision; and
- The JFRMU Onsite Coordinator must receive a copy of every rejected grievance.

If the GSM designated to receive grievances believes the grievance is one that should not be processed fully, then he/she will document that determination and refer the grievance to the GAP for second-level review. If the GAP concurs, then the grievance will be logged in the resident grievance log with "rejected" as the disposition, and a copy of the grievance will be placed in the resident's file.

Centers will send all grievances related to SAA and the Center's decisions with respect to such grievances to the appropriate FOD at the end of the grievance process.

## **H. Allegations of Staff Misconduct**

Upon receipt, Center staff must forward all resident grievances containing allegations of staff misconduct to a supervisor or higher-level official in the chain of command, and the JFRMU Onsite Coordinator. While such grievances are to be processed through the Center's established grievance system, Centers also must forward a copy of any grievances alleging staff misconduct to ICE/ERO in a timely manner with a copy going to ICE's OPR Joint Intake Center and/or local OPR office for appropriate action.

Staff, ICE/ERO, and contracting staff must comply with all DHS and ICE requirements to report allegations of staff misconduct to a supervisor in his/her chain of command, and/or to ICE/ERO OPR, and/or to OIG.

Staff, ICE/ERO, and contracting staff also must comply with all Federal, State, and local requirements for reporting allegations of child abuse. All allegations also will be reported immediately to the JFRMU Onsite Coordinator.

**6.2 Grievance System****I. Retaliation Prohibited**

Staff will not harass, discipline, punish, or otherwise retaliate against a resident who files a complaint or grievance or who contacts the DHS/OIG.

Actions are considered retaliatory if they are in response to an informal or formal grievance that has been filed and the action has an adverse effect on the resident's life in the Center.

Immediately following any indication or allegation of retaliation, the Center and ICE/ERO will conduct an investigation of alleged acts of retaliation, and take all steps necessary to stop and remedy any retaliation determined to have occurred.

**J. Review of Resident Grievances**

The ICE Office of Detention Oversight may review on a periodic basis a statistical sampling of Center grievances to evaluate compliance with this standard and the associated grievance procedures; to assess the reasonableness of final decisions; and to generate data showing trends in the types of grievances, timeframes for resolution, and outcomes at various Centers. Resident grievances also will be reviewed during ICE/ERO-initiated Center inspections.

Any Center noncompliance will be reported to the JFRMU Chief.

**References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Staff-Resident Communication

## 6.3 Law Libraries and Legal Material

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects residents' rights by ensuring their access to courts, counsel, and comprehensive legal materials.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Each resident's legal rights will be protected.
2. Residents will have access to a properly equipped law library, legal materials, and equipment (including photocopying resources) to facilitate the preparation of documents.
3. When requested and where resources permit, Centers will provide residents meaningful access to law libraries, legal materials, equipment, and related materials on a regular schedule and no fewer than 10 hours per week.
4. Special scheduling consideration will be given to residents facing deadlines or time constraints.
5. Residents will not be required to forgo recreation time to use the law library. Requests for additional time to use the law library will be accommodated to the extent possible, including accommodating work schedules when practicable, consistent with safe and secure Center operations.
6. Residents will have access to courts and counsel.

### 6.3 Law Libraries and Legal Material

7. Residents will be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone, and through correspondence.
8. Residents will receive assistance where needed (e.g., orientation to written or electronic media and materials; assistance in accessing related programs, forms, and materials); in addition, residents who are illiterate, have limited English proficiency (LEP), have a disability, or are indigent (a resident is considered “indigent” if he/she has fewer than \$15 in his/her account) will receive appropriate special assistance.
9. Residents will be notified of the Center’s rules on law libraries and legal material through the resident handbook and local supplement.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Access to Legal Material* dated 12/21/2007.

## Expected Practices

### A. Law Library

Each Center will provide a properly equipped law library in a designated, well-lit room that is reasonably isolated from noisy areas and large enough to provide reasonable access to all residents who request its use. It will be furnished with a sufficient number of tables and chairs to accommodate residents’ legal research and writing needs.

### B. Supervision

The Center will develop procedures that effectively prevent residents from damaging, destroying, or removing equipment, materials, or supplies from the law library.

Centers are encouraged to monitor resident use of legal materials to prevent vandalism.

Supervision will not be used to intimidate or otherwise impede residents’ lawful use of the law library.

### C. Hours of Access

Each Center Administrator will devise a flexible schedule that:

- Permits all residents, regardless of housing, to use the law library on a regular basis;
- Enables maximum possible use without interfering with safe and secure Center operations. Generally, law library hours of operation will be scheduled between 8 a.m. and 8 p.m. daily;
- Determines the number of residents permitted to use the law library at any given time; and
- Takes into consideration any rules that regulate the intermingling of differently classified residents.



### 6.3 Law Libraries and Legal Material

Each resident will be permitted to use the law library for a minimum of 10 hours per week. Residents may not be forced to forego their minimum recreation time to use the law library (in accordance with the ICE Family Residential Standard on *Recreation*). Staff will accommodate resident requests for additional law library time to the extent possible, and requests for the accommodation of work schedules to the extent practicable, consistent with safe and secure Center operations, and with special priority given to such requests from residents facing a court deadline.

#### D. Equipment

The law library will have an adequate number of computers, printers, and their supplies to support the resident population. Sufficient writing implements, paper, photocopiers, facsimile machines, and related office supplies will be provided to residents to prepare documents for legal proceedings, special correspondence, or legal mail. The law library also will provide access to two-hole punches, folders, and, where appropriate, computer disk containers. A sign-in sheet will be maintained to establish fair and orderly use, based on demand.

Consistent with safe and secure Center operations, residents will be provided with electronic media storage (e.g., disks, thumb drives, CDs), in a secure and private electronic format, password protected, so they may return at a later date to access previously saved legal work products.

Each Center Administrator will designate an employee to inspect equipment daily, at a minimum, to ensure it is in good working order, and to stock sufficient supplies.

#### E. Maintaining Up-to-Date Legal Materials

##### 1. Materials for Law Libraries

Each law library will contain the materials listed in Appendix 6.3.A: List of Legal Reference Materials for Family Residential Centers in printed and/or electronic form (unless any are found to be out of print), and also may include the optional legal reference materials in Appendix 6.3.B: Optional Legal Reference Materials. Each law library also will contain any materials approved by the Juvenile and Family Residential Management Unit (JFRMU) Chief. If in printed form, then ICE/Enforcement and Removal Operations (ERO) will arrange for subscriptions to services that update materials, if available, for each publication on the list.

**Paper Publications.** Centers are encouraged to make available paper versions of the materials listed in Appendix 6.3.A: List of Legal Reference Materials for Family Residential Centers, by ordering copies from the publisher. (See Appendix 6.3.C: Publishers' Addresses and Telephone Numbers. Ordering information also can be obtained from the Office of the Principal Legal Advisor Law Librarian, at 202-732-5000.)

**LexisNexis CD-ROM (or ICE/ERO-approved Equivalent).** As an alternative to obtaining and maintaining the paper-based publications in Appendix 6.3.A: List of Legal Reference Materials for Family Residential Centers, Centers may make available in the law library the LexisNexis CD-ROM (or ICE/ERO-approved equivalent) provided by ICE/ERO containing the required publications.

The Center Administrator must certify to the respective Field Office Director (FOD), with verification, that the Center provides residents sufficient access to:

### 6.3 Law Libraries and Legal Material

- Operable computers capable of running the LexisNexis CD-ROM (or ICE/ERO-approved equivalent);
- Operable printers;
- Supplies for both; and
- Instructions on basic use of the system.

If materials are provided on CD-ROM or in another electronic format, then technical assistance will be provided.

#### 2. Updating and Replacing Legal Materials

Each Center Administrator will designate a Center Law Library Coordinator to be responsible for inspecting legal materials weekly, updating them, maintaining them in good condition, and replacing them promptly as needed. The resident handbook and local supplement also will provide residents with information regarding the procedure for notifying a designated employee that library material is missing, out of date, or damaged.

**ICE/ERO Headquarters Coordinator.** At ICE/ERO headquarters, JFRMU in the Custody Management Division is designated as the coordinator to assist Centers and Field Offices in maintaining up-to-date law library materials.

The Office of the Principal Legal Advisor (OPLA) will review and update the contents of Appendix 6.3.A: List of Legal Reference Materials for Family Residential Centers annually at a minimum. Updated materials will be provided as soon as practicable after such materials are published. Centers must take care to ensure that the most updated statutes, regulations, and other required legal materials are in the library at all times.

ICE/ERO will arrange a subscription to the updating service, if available, for each publication on the list.

If anticipated updates are not received or if subscriptions lapse, then the Center Administrator (or designee) will seek assistance from ICE/ERO. The Center Law Library Coordinator will check with ICE quarterly to ensure that the law library has the most up-to-date version of the LexisNexis CD-ROM (or ICE/ERO-approved equivalent).

**List of Publishers.** Information regarding updating can be obtained directly from the publishers in Appendix 6.3.C: Publishers' Addresses and Telephone Numbers. The ICE/OPLA Law Librarian also can provide updating information.

Centers will seek assistance from ICE/ERO if subscriptions lapse or anticipated updates are not received in a timely manner.

**Procedures for Replacement of Materials.** When a Center receives replacement supplements or other materials, the Law Librarian or other designated individual will dispose of the outdated ones.

Damaged or stolen materials will be replaced promptly. In addition to conducting regular inspections, the Center will encourage residents to report missing or damaged materials. The Center may obtain replacements by contacting ICE/ERO.

## **6.3 Law Libraries and Legal Material**

If materials from outside organizations need to be replaced, then the Center will contact ICE/ERO to obtain replacements from the submitting organization.

### **F. Materials from Outside Persons or Organizations**

Outside persons and organizations may submit requests to the FOD for approval of legal materials to be included in the Center's law library. Centers that receive published or unpublished legal material for inclusion in a Center's law library will forward them to the FOD for review. If the material is in a language other than English, then a certified English translation must be provided.

#### **1. Published Material**

If a Center receives published material, then the Center Administrator will accept or decline this material based on considerations of usefulness and space limitations. If published materials related to immigration law or procedures are declined, then the Center Administrator will notify the submitter and the FOD in writing of the reason.

#### **2. Unpublished Material**

If the Center receives any unpublished legal material, then the Center Administrator will forward this material as soon as possible to the FOD for review and approval. Unpublished immigration-related material can include intake questionnaires from nongovernmental legal service provider organizations.

Unpublished material must have a cover page that:

- Identifies the submitter and the preparer of the material;
- Clearly states that ICE/ERO did not prepare and is not responsible for the contents; and
- Provides the date of preparation.

The FOD's decision will be made expeditiously, ordinarily within 45 days. The FOD may reject in whole or in part, materials that may pose a threat to safe and secure Center operations, or materials that misstate immigration law, policies, or procedures. The FOD will consult with OPLA and other appropriate ICE/ERO staff to determine whether to approve the materials. Submitters will be notified in writing of the FOD's decision and justification.

Material provided in a language other than English must include a certified English translation.

### **G. Requests for Additional Legal Material**

Residents may submit a written request to the Center Administrator for legal materials not available at the Center law library. The request will specify the title and author of the material requested. The Center Administrator will inform ICE/ERO of the request as soon as possible.

ICE/ERO, with the assistance of the Office of the Principal Legal Advisor, will respond to all requests within two business days of receipt. Requests from residents who face imminent deadlines will receive priority. Requests for copies of specific court decisions normally will be made available within three business days of receipt. If the request is not approved, then ICE/ERO will inform the submitter in writing of the reason for the denial.

## 6.3 Law Libraries and Legal Material

### H. Photocopying Legal Documents

The Center will ensure that residents can obtain at no cost to the resident photocopies of legal material and special correspondence in accordance with the ICE Family Residential Standard on *Correspondence and Other Mail* when such copies are reasonable and necessary for a legal proceeding involving the resident. This may be accomplished by providing residents access to a copier, or by making copies for residents.

Residents also will be permitted to photocopy grievances and letters regarding conditions of residency. Residents will not be prohibited from photocopying sick call requests, corrective decisions, special needs forms, photographs, newspaper articles, or other documents that are relevant to the presentation of any type of immigration proceeding.

The number of copies of documents to be filed with a particular court, combined with the number required for ICE/ERO records and the number required for the resident's personal use will determine the number of photocopies required.

Requests for photocopies of legal material may be denied only if:

- The documents might pose a risk to safe and secure Center operations;
- Copying would constitute a violation of any law or regulation;
- The request is clearly abusive or excessive; or
- There are other legitimate security reasons.

Center staff will inspect documents offered for photocopying to ensure that they comply with these rules. However, staff may not read special correspondence or any document that on its face is clearly a legal document involving that resident.

All requests will be documented in the resident's residential file. Prior to denying any request, the Center Administrator will advise the JFRMU Onsite Coordinator. The JFRMU Onsite Coordinator will be responsible for advising the JFRMU Chief and the respective FOD. Staff denying the request will advise the resident they may appeal the request through the resident grievance system.

### I. Assistance to Residents

#### 1. Assistance from Center Staff

Upon request, staff will attempt to aid residents in accessing law library services and materials, provide technical assistance, and contact *pro bono* legal assistance organizations on the Executive Office for Immigration Review website.

#### 2. Assistance from Other Residents

The Center will permit residents to assist other residents in researching and preparing legal documents upon request, except when such assistance poses a security risk. Such assistance is voluntary, and no resident will be allowed to charge a fee or accept anything of value for assistance.

Centers are encouraged to allow outside volunteers and programs who train residents to help other residents to access legal materials.

### **6.3 Law Libraries and Legal Material**

The Center Administrator may not provide compensation to a resident for researching or preparing legal documents.

#### **3. Assistance to Residents with Disabilities, LEP, and Illiterate Residents**

Residents who are illiterate, who have LEP, or who have a disability and who wish to pursue a legal claim related to their immigration proceedings or residency, and who request assistance or indicate difficulty with the legal materials, must be provided assistance beyond access to a set of English-language law books.

To the extent practicable, and consistent with safe and secure Center operations, efforts will be made to assist all residents who are illiterate, who have LEP, or who have a disability in using the law library. Centers will establish procedures to meet this requirement on a case-by-case basis.

If such efforts are unsuccessful in providing the resident sufficient assistance, then the Center will contact the ICE/ERO Field Office to determine appropriate further action.

#### **J. Personal Legal Materials**

When residents have large amounts of personal legal materials, staff may place a portion of the legal materials in the resident's personal property storage. The resident will be permitted access in accordance with the ICE Family Residential Standard on *Funds and Personal Property*.

For a resident with a large amount of personal legal materials, the Center will make the following provisions:

- A portion of the materials may be placed in a personal property storage area, with access permitted during designated hours;
- The Center will provide an explanation to the resident as to why the materials present a safety, security, or sanitation hazard;
- Requests for access will be granted as soon as feasible, but no later than 24 hours after receipt of the request, unless documented security concerns preclude action within that timeframe; and
- Residents who have a documented, scheduled immigration hearing within 72 hours will be provided access to their personal legal materials to the extent practicable.

#### **K. Envelopes and Stamps for Indigent Residents**

Ordinarily, a resident is considered "indigent" if he/she has fewer than \$15 in his/her account. Centers will make a determination without unreasonable delay as to whether a resident is indigent.

The Center will provide indigent residents with free envelopes and stamps for domestic mail related to a legal matter, including correspondence to a legal representative, a potential legal representative, or any court. Requests to send international mail also may be honored.

Indigent residents may receive assistance from local consular officials with international mail. As noted in this standard, envelopes and stamps are provided to indigent residents for delivery of mail to consulates in the United States.

### 6.3 Law Libraries and Legal Material

#### **L. Notaries, Certified Mail, and Miscellaneous Needs Associated With Legal Matters**

In accordance with the ICE Family Residential Standard on *Correspondence and Other Mail*, Centers will provide assistance in a timely manner to any unrepresented resident who requests a notary public, certified mail, or other such services to pursue a legal matter if the resident is unable do so through a family member, friend, or community organization.

If it is unclear whether the requested service is necessary, then the Office of the Principal Legal Advisor will be consulted. A reply will be received in a timely manner; pressing legal matters with a deadline will be prioritized.

Telephone access for indigent unrepresented residents requesting legal materials will be in compliance with the ICE Family Residential Standard on *Telephone Access*.

#### **M. Notice to Residents**

Centers will notify residents of the law library rules and procedures through a resident handbook and local supplement, as appropriate, including the following information:

- That a law library is available for resident use;
- The location and scheduled hours of access to the law library;
- The procedure for requesting access to the law library, including in situations where it is occupied to maximum capacity;
- The procedure for requesting additional time in the law library (beyond the 10-hours-per-week minimum);
- The procedure for requesting legal reference materials not maintained in the law library;
- The procedure for notifying a designated employee that library material is missing or damaged;
- The status of required access to computers, printers, and other supplies; and
- If applicable, that LexisNexis (or ICE/ERO approved equivalent) is used at the Center and that instructions for its use are available.

These policies and procedures also will be posted in the law library, along with a list of the law library's holdings. The list of the law library's holdings will be kept up to date, and will include the date and content of the most recent updates of all legal materials available to residents in print and electronic media.

#### **N. Retaliation Prohibited**

Staff will not permit a resident to be subjected to reprisals, retaliation, or penalties because of a decision to seek judicial or administrative relief or investigation of any matter, including but not limited to the following:

- The legality of his/her confinement;

### **6.3 Law Libraries and Legal Material**

- The conditions of confinement or treatment while in residency;
- Any issue relating to his/her immigration proceedings;
- Any allegation that the Government is denying rights protected by law; or
- Any investigation conducted by the U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties or the DHS Office of the Inspector General.

A resident may be denied access to the law library or to legal material only in the event that safe and secure Center operations or the safety and security of a resident is a concern.

A resident will not be denied access to law libraries and legal materials as a corrective measure, reprisal, retaliation, or penalty.

## **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard Correspondence and Other Mail
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on Grievance System
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Recreation
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Telephone Access



**6.3 Law Libraries and Legal Material**

## **Appendix 6.3.A: List of Legal Reference Materials for Family Residential Centers**

Revised March 2019

The information in Appendix 6.3.A: List of Legal Reference Materials for Family Residential Centers, Appendix 6.3.B: Optional Legal Reference Material, and Appendix 6.3.C: Publishers' Addresses and Telephone Numbers was updated as of March 2019. All costs are approximate and need to be verified before purchase. Further information may be obtained from the publishers, whose names and addresses are provided in Appendix 6.3.C: Publishers' Addresses and Telephone Numbers. Ordering and updating information also can be obtained from the ICE/OPLA Law Librarian, at 202-732-5000.

### **Constitution of the United States of America: Analysis and Interpretation**

Prepared by the Congressional Research Service, Library of Congress, 2014.

One hardbound volume and 2014 supplement

Order from U.S. Government Bookstore: <http://bookstore.gpo.gov/>

Cost: \$226.00

Updated: Supplements and revised editions published irregularly

### **United States Code, Title 8, Aliens and Nationality**

Individual Titles of the United States Code Annotated are available

Title 8 is in six volumes

Order from Thomson West

Cost: \$396.00; \$2,656.00 for set

### **Code of Federal Regulations, Title 8, Aliens and Nationality**

Codification of general and permanent rules

Published in the Federal Register

Order from U.S. Government Bookstore: <http://bookstore.gpo.gov/> PO Stock # 869-088-00024-2

Cost: \$68.00

Updated: Published annually

### **Bender's Immigration and Nationality Act Set**

Immigration and Nationality Act updated quarterly

One loose-leaf volume

Order from LexisNexis Matthew Bender Publication number 132

Cost: \$227.00; renewal subscription \$212.00

### 6.3 Law Libraries and Legal Material

#### Bender's Immigration Regulations Service

Immigration and Nationality Regulations updated monthly

Two loose-leaf volumes

Order from LexisNexis Matthew Bender Publication Number 695

Cost: \$532.00; renewal subscription \$464.00

#### Administrative Decisions Under Immigration and Nationality Laws

Board of Immigration Appeals (BIA) decisions consisting of bound volumes and loose-leaf decisions:

Bound Volumes: Volumes 1–26 (1940–2017)

Per Set: \$1,950.00

Volumes 1-7 are \$95.00 each (as are v. 1-24)

Volume 25 - \$105.00 + S/H, volume 26 - \$110.00

Current Interim Decisions Service (volume 27) covers #3887 (April 6<sup>th</sup>, 2017) through May 31, 2019 includes 2 binders: \$320.00.

Latest one released is #3948 (Dec. 20<sup>th</sup>, 2018).

Order from William S. Hein & Co., Inc. ([www.wshein.com/catalog](http://www.wshein.com/catalog))

Note: Precedent decisions (Vol. 8 and continuing) from the BIA are available at

[http://www.usdoj.gov/eoir/vll/intdec/lib\\_indecitnet.html](http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html).

#### Immigration Law and Defense

By the National Immigration Project of the National Lawyers Guild.

Spring 2019 Edition includes forms

Order from Thomson West

Cost: \$1,038.00 (full set)

Updated: Annual subscription \$1,352.00

#### Immigration Law and Crimes

By the National Immigration Project of the National Lawyers Guild

Winter 2018 Edition

Order from Thomson West

Cost: \$791.00

Updated: Annual subscription \$1,779.00

#### Guide for Immigration Advocates (twenty-first edition)

A manual covering the basics of immigration law and researching immigration law; written as a simple guide for paralegals

One loose-leaf volume published in 2018

Order from Immigrant Legal Resource Center

Cost: \$440.00 for nonprofit

Updated: Published irregularly

### 6.3 Law Libraries and Legal Material

#### Country Reports on Human Rights Practices

Submitted by the U.S. Department of State to the Committee on Foreign Affairs of the U.S. House of Representatives and the Committee on Foreign Relations of the U.S. Senate

Available electronically at [www.state.gov/g/drl/rls/hrrpt/](http://www.state.gov/g/drl/rls/hrrpt/).

Updated: Published annually.

#### Human Rights Watch—World Report

One bound volume

Order from Human Rights Watch, Publication Department: <http://www.hrw.org>

Cost: \$34.00

Note: Available electronically at <http://www.hrw.org>

Updated: Annually

#### United Nations High Commissioner for Refugees (UNHCR) Handbook on Procedures and Criteria for Determining Refugee Status

One pamphlet re-issued in December 2011

Download 200-page pamphlet from <http://www.unhcr.org/>

Updated: Irregularly

#### Considerations for Asylum Staff Members Adjudicating Asylum Claims from Women

Immigration and Naturalization Service Memorandum May 26, 1995

Order from ICE/OPLA Law Librarian.

#### Affirmative Asylum Procedures Manual

Citizenship and Immigration Services, Office of International Affairs, Asylum Division

Download from [www.uscis.gov](http://www.uscis.gov)

104-page manual, May 2016

Updated: Irregularly

#### American Association of Immigration Lawyers' (AILA) Asylum Primer (seventh edition)

One softbound volume

Order from AILA

Cost: \$189.00

Updated: Irregularly

#### Rights of Prisoners (fifth edition), by Michael B. Mushlin

Order from Thomson West

Cost: \$720.00

Updated: Annual pocket parts \$243.00

#### Federal Habeas Corpus, Practice & Procedure (seventh edition)

Two hardbound volumes published 2015, with current supplement

Order from LexisNexis Matthew Bender

Cost: \$512.00

### 6.3 Law Libraries and Legal Material

Updated: Loose-leaf update, \$117.00

#### **Federal Civil Judicial Procedure and Rules (2019 edition)**

Paperback volume

Order from Thomson West

Cost: \$215.00

Updated: Re-issued semiannually, usually in March and August

#### **United States Code, Title 28, Rules, Appellate Procedure, Pamphlets I + II**

Only the two softbound volumes contain the U.S. Court of Appeals Rules

2018 Edition

Order from Thomson West

Cost: \$118.00 each volume; \$236.00 total

Updated: Annually, usually in June

#### **Federal Criminal Code and Rules**

Paperback volume, 2019 Edition

Order from Thomson West

Cost: \$225.00

Updated: Published semiannually, usually in March and August

#### **LaFave, Israel, King and Kerr's Criminal Procedure (sixth edition), Hornbook Series**

One volume, 2017

Order from West Academic

Cost: \$125.00

Updated: Published irregularly

#### **Olson's Legal Research in a Nutshell (thirteenth edition)**

Paperback volume published 2007

Order from West Academic

Cost: \$47.00

Updated: Published irregularly

#### **Murray and DeSanctis' Legal Writing and Analysis (second edition)**

One volume, 2015

Order from West Academic

Cost: \$129.00

Updated: Published irregularly

#### **Black's Law Dictionary, Latest Standard Edition (tenth edition) 2014**

One volume, hardbound

Order from Thomson West

Cost: \$81.95

Updated: Published irregularly

### **6.3 Law Libraries and Legal Material**

#### **Directory of Nonprofit Agencies that Assist Persons in Immigration Matters**

Available online at [www.immigrationlawhelp.org](http://www.immigrationlawhelp.org)

Updated: Irregularly

#### **Other Translation Dictionaries**

To be selected by the Center Administrator or Law Librarian in accordance with the most common languages spoken by the respective resident population

#### **Resident Handbook and Resident Orientation Materials**

##### **Self-help Materials**

Materials provided by outside organizations after clearance pursuant to the procedures described in Section V.F. of ICE Family Residential Standard on *Law Libraries and Legal Material*.

#### **Telephone Books (Yellow Pages or Equivalent)**

Provided for local areas and nearby metropolitan areas where counsel may be located

Note: Cost of an initial purchase of an item with an annual subscription includes the first year of subscription updates.

## Appendix 6.3.B: Optional Legal Reference Materials

Revised March 2019

### **Bender's Immigration Case Reporter**

Decisions from Federal Court, BIA, AAU, and Board of Alien Labor Certification Appeals from 1984 forward

Three volumes and loose-leafs

Order from LexisNexis Matthew Bender

Publication Number 403 Release 410

Cost: \$2,713.00

Updated: Annual subscription \$2,466.00

## Appendix 6.3.C: Publishers' Addresses and Telephone Numbers

Revised March 2019

### **AILA**

1331 G Street NW, Suite 300  
Washington, D.C. 20005  
[www.aila.org](http://www.aila.org)  
1-800-982-2839

### **Human Rights Watch**

Publications Department  
350 Fifth Ave., 34th Floor  
New York, NY 10118-0329  
<http://hrwpubs.stores.yahoo.net>  
212-216-1809

### **Immigrant Legal Resource Center**

1458 Howard Street  
San Francisco, CA 94103  
[www.ilrc.org](http://www.ilrc.org)  
415-255-9499

### **LexisNexis Matthew Bender**

1275 Broadway  
Albany, NY 12204  
Federal Government Sales: Robert D. Raskin  
(937) 247-8173  
[Robert.D.Raskin@lexisnexis.com](mailto:Robert.D.Raskin@lexisnexis.com)  
<http://bookstore.lexis.com/bookstore/catalog>

### **National Immigration Law Center**

3450 Wilshire Blvd. #108-62  
Los Angeles, CA 90010  
[www.nilc.org](http://www.nilc.org)  
213-639-3900

### **Thomson West**

610 Opperman Dr.  
MS B-6M-N512  
Eagan, MN 55123  
Federal Government Sales: David Waldhauser  
1-800-328-9352, Ext. 7118

### **West Academic**

444 Cedar Street, Suite 700



### 6.3 Law Libraries and Legal Material

St. Paul, MN 55101  
Federal Government Sales: Scott Duckson  
Scott.Duckson@westacademic.com  
(651) 202-4764

#### U.S. Government Printing Office

<http://bookstore.gpo.gov/>  
1-866-512-1800

#### United Nations High Commissioner for Refugees

1775 K St., NW, Suite 300  
Washington, DC 20006  
[www.unhcr.org](http://www.unhcr.org)  
202-296-5191

#### William S. Hein & Co.

2350 North Forest Road  
Getzville, NY 14068  
[www.wshein.com](http://www.wshein.com)  
1-800-828-7571  
Government Sales Contact: Dale M. Missert (Mr.)  
(716) 882-2600, ext. 11  
[dmissert@wshein.com](mailto:dmissert@wshein.com)

#### Note

West Publishing Company was bought by Thomson, a Canadian corporation, and is now operated as Thomson West. This company purchased Clark Boardman & Callaghan, as well as a number of other small legal publishing companies.

LexisNexis Matthew Bender was formed by the purchase of LexisNexis, Matthew Bender Company, the Michie Company, and Shepard's-McGraw Hill, Inc. They are a division of Reed-Elsevier, a Dutch corporation.

Caution: Federal Government pricing is deeply discounted from prices found in the publisher's general catalogs or websites. Always use the Federal Government contacts at privately owned publishers. If none is listed, then ask whether special Federal pricing is available. AILA gives ICE the member discount.

## 6.4 Legal Rights Group Presentations

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that authorized persons and organizations may present information on U.S. immigration law and procedures freely to residents. This standard also ensures residents will have open access to these presentations.

Consistent with safe and secure Center operations, ICE/Enforcement and Removal Operations (ERO) encourages such presentations. All Centers are required to cooperate fully with authorized persons seeking to make such presentations.

Various terms used in this standard may be defined in ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers will cooperate fully with authorized persons and organizations conducting legal rights group presentations in keeping with safe and secure Center operations.
2. Residents will have access to group presentations on U.S. immigration law and procedures and all other relevant issues related to the immigration court, appeals, and discharge processes, including a resident's legal rights.
3. Persons and organizations requesting to make such group presentations will be able to obtain clear information about becoming authorized to provide legal rights group presentations, including regularly scheduled presentations.

## 6.4 Legal Rights Group Presentations

4. Residents will not be subject to reprisals, retaliation, or penalties for attending legal rights group presentations.
5. Residents will be able to communicate and correspond with representatives from the legal groups who make presentations at the Centers.
6. Residents will have access to information and materials provided by legal groups. Organizations will be permitted to distribute information in response to specific legal issues.
7. For a legal assistant or law student to help with the presentation, the supervising attorney must submit a letter in advance of the presentation.
8. Residents will have access to group presentations by diplomatic representatives.
9. The Center's rules and procedures relating to legal rights group presentations will be communicated to the resident through the resident handbook and local supplement in a language or manner the resident can understand.
10. Residents will be notified of all scheduled presentations at least 48 hours in advance.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Legal Rights Group Presentations* dated 12/21/2007.

## Expected Practices

### A. Requests to Make Group Presentations on Legal Rights

Attorneys or legal representatives interested in making a group presentation on legal rights must submit a written request to the Field Office Director (FOD), who will accommodate, to the greatest extent possible. Requests must be submitted to the FOD at least 10 days in advance of the proposed presentation. The FOD may allow a presentation to take place on shorter notice at his/her discretion, or when circumstances arise that compel presentations on shorter notice. The FOD will notify the approved presenter 10 days in advance of the scheduled presentation, or within 1 week of the request having been made, whichever date is earlier.

The written request must contain the following information:

- A general description of the intended audience;
- A syllabus or outline of the presentation;
- A list of any published or unpublished materials proposed for distribution in accordance with the Written Materials section in this standard;
- An informational poster as described in the Resident Notification and Attendance section in this standard;
- A statement of the languages in which the presentation will be conducted;

#### **6.4 Legal Rights Group Presentations**

- The name, date of birth, social security number (or passport number if social security number is not available), profession, and specific function of each person requesting permission to enter the Center (including interpreters);
- Certification that each person making the presentation is an attorney, legal representative, legal assistant, or interpreter;
- A proposed date (or range of dates) for the presentation;
- A telephone number and contact person; and
- If a party contains more than four persons (including legal assistants and interpreters), then a special request must be made as described in the Who May Present section in this standard.

For a legal assistant or law student to help with the presentation, the supervising attorney must submit a letter in advance of the presentation, as described in the Who May Present section in this standard.

To distribute written materials, a presenter must apply for approval as described in the Written Materials section in this standard.

The FOD will make reasonable accommodations to the presenter's need to amend the information contained in the written request to reflect changes that may have occurred since the initial request was made, including, but not limited to, distribution materials, informational posters, languages, and participants.

#### **B. Request Granted**

If the FOD approves the request, then ICE/ERO will telephone the listed contact person to arrange a mutually acceptable date and time for the presentation. Upon request, five days prior to a scheduled legal rights group presentation, ICE/ERO will notify the legal representative contact of the following characteristics of the resident population:

- Number of residents dwelling at the Center and the number of residential areas in which they are housed;
- Countries of origin of those residents; and
- Gender breakdown of residents.

When presentations are scheduled on short notice, such as in response to an enforcement action, the information above will be provided in full or partial form as available.

ICE will accept updated lists of presenters no fewer than five days prior to the presentation date.

Any request denials will be reviewed by the Office of the Principal Legal Advisor (OPLA) and the FOD will provide the submitter a written explanation.

## **6.4 Legal Rights Group Presentations**

### **C. Scheduling Presentations**

Presentations must be scheduled during legal visitation hours, excluding weekends and holidays. If feasible, presentations may be conducted at other times, immediately before residents' first immigration court appearances, and/or under other circumstances, such as after an influx of residents subsequent to an ICE enforcement action or a transfer of residents from one Center to another. Legal rights group presentations will be accommodated to the greatest extent possible absent logistical or security-related concerns.

To request permission to conduct additional and/or ongoing presentations, the requester may submit a request to the FOD that refers to previously approved materials, notes, any proposed changes in the content or personnel, and proposed dates or continuing time frames. The FOD will accommodate, to the greatest extent possible, the presenter's need to amend the information contained in the written request to reflect the changes that may have occurred since the initial request was made, including, but not limited to, distribution materials, informational posters, languages, and participants.

Centers are not required to arrange presentations if attorneys or other legal representatives make no requests, or if the Field Office does not approve any requests.

### **D. Material for Nationwide Presentation**

Written and electronic presentations intended for nationwide presentation may be sent to the FOD. ICE/ERO will coordinate with OPLA. Once approved, the material may be used in Centers.

### **E. Legal Orientation Programs (LOPs)**

The U.S. Department of Justice, Executive Office of Immigration Review (EOIR) was authorized by Congressional appropriations to provide LOPs to residents. Through contracts with nongovernmental organizations (NGOs), EOIR developed LOPs to provide resident groups with a comprehensive presentation on immigration court procedures and other basic legal information. LOPs are composed of three components:

- An interactive group orientation;
- An individual orientation; and
- A referral/self-help component.

Though similar to legal rights group presentations, LOPs as carried out by the EOIR are distinct, government-sponsored programs and are authorized by congressional appropriation.

The specific requirements and procedures outlined in this standard do not apply to LOPs. EOIR carries out LOPs through contracts with NGOs, and in consultation with ICE. As such, EOIR and ICE may establish separate program operation plans for an LOP at each site.

EOIR LOPs operate in a limited number of ICE Centers and, subject to available funding, will be developed and implemented in other Centers as designated by both EOIR and ICE.

## 6.4 Legal Rights Group Presentations

### F. Resident Notification and Attendance

The presentation requestor must provide a one-page poster (no larger than 8.5 x 11 inches) to inform residents of the general nature and contents of the presentation, the intended audience, and the languages in which the presentation will be conducted. For poster text in languages other than English, an English translation must be provided.

The Center Administrator will review posters within three business days of submission to ensure that they meet the above requirements and that the display of the poster will not endanger safe and secure Center operations. The Center Administrator will contact the person listed on the request form if additional information is required, or if the poster does not meet specified requirements. The Center Administrator will make a good-faith effort to work with the requestor to develop mutually acceptable materials. In such cases, the Center Administrator will notify ICE/ERO.

Once approved by an ICE representative, designated Center staff will display the informational posters provided by the presenter prominently in living and activity areas at least 48 hours before the scheduled presentation, and each living area staff member will provide a sign-up sheet at least 48 hours before a presentation for residents who plan to attend; however, residents who fail to sign up will not be deprived of the opportunity to attend a presentation for that reason. Each presentation will be open to all residents. Arriving residents will be informed of the first available LOP presentation.

The Center Administrator may limit the number of residents attending a single session based on the number of interested residents or the need to separate groups of residents for safety and security. In these cases, the presenter will be encouraged to conduct several presentations, and will be advised to contact the Center Administrator the day before the presentation to determine the number of sessions that will be required.

Presentations will be open to all residents, regardless of the presenter's intended audience, except when a particular resident's attendance may pose a safety risk.

### G. Who May Present

Supervised law students and/or legal assistants may assist with or conduct a presentation if the supervising attorney and/or legal representative:

- Submits a letter identifying the law student or his/her legal assistants and affirms that the legal assistant presence is directly related to the presentation; and
- Attends any presentation in which any such assistant participates or prepares a letter identifying the presenters and affirming that the supervisory relationship directly relates to the presentation.

The Center will admit properly identified interpreters to assist the presenters in accordance with the ICE Family Residential Standard on *Visitation*. ICE is not responsible for providing interpreters for presenters.

As a general rule, presentation parties may not exceed four people, including legal assistants, supervised law students, and interpreters; however, a Center may waive this rule upon advance receipt of a written request.

## **6.4 Legal Rights Group Presentations**

### **H. Entering the Center**

Center staff will require each person seeking entry to present an official form of picture identification (e.g., driver's license or State identification card). Attorneys also must present State-issued bar cards or, in States where these are not available, other proof of bar membership. If such documentation is not readily available to attorneys licensed in a particular State, then they must indicate where they are licensed as attorneys and how that may be verified prior to their approval for admittance. The Center may require presenters to arrive at least 30 minutes before the scheduled start of the presentation. A presentation should not be cancelled because presenters arrive late, however, provided the late arrival does not present an issue with maintaining safe and secure Center operations.

After check-in, Center staff will escort the presenters to the presentation site and will escort the residents to that location.

### **I. Presentation Guidelines**

The Center will select and provide a private environment that is conducive to the presentation and is consistent with safe and secure Center operations. Once residents have been assembled, presenters ordinarily will be granted a minimum of 1 hour for the presentation and additional time for a question-and-answer session. The Center Administrator may extend that time period on a case-by-case basis.

The Center will require presenters to abide by all rules and regulations applicable to visitors to the Center. Presentations must be conducted in a manner consistent with safe and secure Center operations. Presenters may neither charge any fee nor solicit business for remuneration during any presentation.

At their discretion, ICE and/or Center staff may observe and monitor presentations, assisted by interpreters as necessary. ICE and Center personnel will not interrupt a presentation, except to maintain safe and secure Center operations, or if the allotted time has expired.

### **J. Written Materials**

If approved in advance by ICE, then presenters may distribute brief written materials that inform residents of U.S. immigration law and procedure and other relevant issues related to the immigration court, appeals, and processes, including resident legal rights. The request for approval of a presentation must list any published or unpublished materials proposed for distribution, and the requestor must provide a copy of any unpublished material, with a cover page that:

- Identifies the submitter and the preparer of the material;
- Includes the date of preparation; and
- States clearly that ICE/ERO did not prepare, and is not responsible for, the contents of the material.

If any material is in a language other than English, then an English translation must be provided.



## 6.4 Legal Rights Group Presentations

Distribution of other than ICE-approved material or material that poses a threat, real or suspected, to safe and secure Center operations, constitutes grounds for discontinuation of presentation privileges.

The volume of materials to be distributed must be reasonable. If the Center Administrator determines materials are too voluminous for distribution at the presentation, then they may be made available to residents in the Center's law library if approved in accordance with the ICE Family Residential Standard on *Law Libraries and Legal Material*.

Presenters will distribute materials at the presentation to residents and ICE and/or Center staff simultaneously.

### **K. Individual Counseling Following a Group Presentation**

Following a group presentation, residents will be permitted to meet in small groups with the presenters to discuss their cases as long as meetings do not interfere with safe and secure Center operations. Presenters will acknowledge in writing that they will not provide specific legal counsel in these individual sessions. As appropriate, sign-up sheets and scheduling slips will be provided to residents to avoid scheduling conflicts with other required appointments for the resident or their child.

ICE and Center staff may not be present during these meetings. The ICE Family Residential Standard on *Visitation* sets forth the rules and procedures for Visits by Legal Representatives and Legal Assistants.

### **L. Suspension or Termination**

The Center may discontinue or temporarily suspend group presentations by any or all presenters, if:

- The presentation or presenters pose an unreasonable security risk for staff, residents, or visitors;
- The presentation deviates materially from approved presentation materials, content, or procedures; or
- The Center is operating under emergency conditions.

The Center Administrator will notify ICE/ERO and provide the justification for termination or suspension. The FOD will send a written explanation to the presenter and OPLA.

A presenter may appeal a suspension or termination in writing to the FOD within 30 days. The FOD will consider the appeal promptly, generally within 48 business hours, and consult with OPLA and the Center Administrator regarding the reasons that caused the suspension or termination, and potential means of addressing those concerns so that the discontinued presentations may resume.

Within 30 days of receiving the appeal, the FOD will inform the presenter in writing of the decision made on any appeal request, and will explain the rationale behind the decision and the means, if any, to rectify the situation.

## 6.4 Legal Rights Group Presentations

### M. Electronic Presentations

ICE encourages qualified individuals and organizations to submit to the FOD any electronically formatted (*e.g.*, PowerPoint, videotape, DVD) presentations on legal rights and transcripts in English and in any other language used. The FOD must review and approve presentations prior to dissemination. If the FOD approves an electronic presentation, then the originators may provide that presentation to individual Centers for viewing by residents.

The electronic presentation must clearly identify its preparer and must clearly state it was not prepared by ICE and that ICE is not responsible for its content.

#### 1. Requesting ICE Approval

The requestor must submit the electronic presentation, along with a transcript in English and in the languages used in the presentation, to both the FOD and the Office of the Principal Legal Advisor. ICE may object to all or part of the electronic presentation if:

- The material may present a threat to safe and secure Center operations;
- The presentation contains misleading or inaccurate statements of ICE policy, immigration procedure, or law; or
- Any part is inconsistent with this standard.

Once the FOD has approved an electronic presentation, the submitter may modify or revise it at any time by submitting a new electronic presentation and its transcripts. Should the FOD believe that aspects of the presentation have become dated or inaccurate, he/she may order the presentations be discontinued and send written notice of such action promptly to the submitter.

#### 2. Resident Viewing of Approved Electronic Presentations

The Center will provide regularly scheduled and announced opportunities for residents to view or listen to electronic presentations. At a minimum, the presentation will be made available to all residents once per week.

The Center also may make such electronic presentations available in the law library, if accessible through computer (*e.g.*, PowerPoint or DVD format), for resident viewing.

Each Center will present only ICE-approved electronic presentations on resident legal rights. If it is not technically feasible to show such pre-approved electronic presentations, then the Center will contact ICE for equipment options.

The Center will maintain electronically formatted presentations and equipment in good condition. However, in the event that electronic copies of the presentation are stolen, destroyed, or otherwise become unusable, the Center will request that ICE obtain replacement copies of the presentation promptly from the originator. The Center will check the operability of the presentation once a week at minimum.

An electronic presentation will not be considered a replacement or substitute for an in-person or live presentation, when available.

#### **6.4 Legal Rights Group Presentations**

### **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Law Libraries and Legal Material
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Visitation

# 7.1 Resident Files

## Introduction

This U.S. Immigrations and Customs Enforcement (ICE) Family Residential Standard contributes to efficient and responsible Center management by maintaining, for each family admitted into the Center for more than 24 hours, a file of all significant information about the family. This standard also addresses security for electronic files.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

A file will be maintained on each family admitted to the Center. Each file will include all documents, forms, and other information specified herein.

1. The security and confidentiality of each file and its contents will be maintained.
2. Electronic record-keeping systems and data will be protected from unauthorized access.
3. Staff will have access to files as needed for official purposes only.
4. File information may be released to an outside third party only with the resident's signed consent and/or in accordance with applicable Federal and State regulations.
5. Centers will maintain files for a minimum of 18 months after discharge of the family, for auditing purposes.
6. Inactive and closed files will be archived properly.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Resident Files* dated 12/21/2007.

## Expected Practices

### A. File Creation

When a family is admitted to a Center, staff will create a family file. Staff will identify an adult head of household whose name and alien number will serve as the primary identifier for each family, and an individual indicator for each family member.

The Center Administrator will develop procedures to ensure admission staff always has consistent access to all necessary supplies and that equipment is maintained in good working order, including photocopiers and paper. The equipment will have the capacity to handle the volume of work generated.

The Center will always have on hand a paper shredder where defective and/or extra photocopies not placed in the resident's file should be shredded, or a locked paper bin in which such defective and/or extra photocopies that are not placed in the resident's file should be placed to be shredded or otherwise destroyed. .

### B. Required File Contents

The file will contain either originals or copies of all forms or their equivalents, and other documents generated during the admissions process and throughout the family's stay. Defective or extra copies will be disposed of properly.

The file will, at a minimum, contain the following documentation for each family member as appropriate:

- Resident intake form;
- I-203;
- Personal property inventory sheet;
- Property receipt(s) for property held by Center;
- Baggage receipt(s) for property held by Center;
- Handbook receipt;
- Religious preference designation and any religious requests;
- Orientation acknowledgement;
- Locker key receipt;
- Work assignment sheet;
- Special requests;
- Corrective action forms;

**7.1 Resident Files**

- Grievances and their disposition (except medical grievances, which are maintained in the medical file);
- Records of counseling;
- Commissary records;
- Other approved documents (e.g., staff reports about the resident's behavior, attitude, etc.);
- G-1025 ("Strip Search" form); and
- Privacy and/or consent forms completed (other than medical), including "Release of Information Consent" forms.

**C. Location of Files**

Files will be located and maintained in a secured area according to the following guidelines:

- Active files will be maintained in the admissions processing area, unless the Center Administrator designates another area;
- The cabinet containing the files does not need to be securable if located in a controlled access area; however, if the cabinet is located in a congested work area or in a high-traffic area, then it must be locked;
- The Center Administrator or designee will determine the key distribution for cabinets that lock; and
- Archived files will be placed in storage boxes, with the time frame clearly marked (e.g., from [mm/dd/yy] to [mm/dd/yy]). The Center Administrator will designate a restricted access storage space.

**D. Archiving Files**

Each file will remain active during the family's stay at a Center, and will be closed and archived upon the last family member's discharge from the Center. When requested, Centers will make inactive files available to ICE/Enforcement and Removal Operations personnel.

Upon the last family member's discharge from the Center, staff will add final documents to the file before closing and archiving the file and after inserting the following:

- Copies of completed discharge documents; and
- Original closed-out receipts for property and valuables.

The staff member closing the file will make a notation (on the "Acknowledgement" form or its equivalent, if applicable) that the file is complete and ready for archiving.

The closed file will not be transferred with the family to another Center. If a family is transferred, the receiving FRC will create its own file in accordance with this standard. Staff may forward copies of file documents at the request of supervisory personnel at the receiving Center or office. When forwarding requested documents, staff at the sending office will update the archived file, noting the document request and the name and title of the requester.

The archival and disposal of files must be done in accordance with agency policies and regulations.

### **E. File Access**

File contents are subject to the same Privacy Act regulations as ICE alien file (A-file) contents. Unless release of information is required by statute or regulation, an adult resident must sign a "Release of Information Consent" form prior to the release of any information about them or their children, and a copy of the form will be maintained in the file. The information contained in the form will be explained to the resident in a language or manner that he/she understands.

The Privacy Act of 1974 provides statutory privacy rights to U.S. citizens and Legal Permanent Residents (LPRs), but the law does not cover aliens who are not LPRs. As a matter of policy, however, U.S. Department of Homeland Security (DHS) treats any personally identifiable information (PII) that is collected, used, maintained, or disseminated in a DHS records system as being subject to the Privacy Act regardless of whether the information pertains to a U.S. citizen, LPR, or alien. Treating such records systems as covered by the Privacy Act establishes efficient and uniform business practices for handling PII without necessitating maintenance of two parallel records systems.

Understanding that resident files are the property of the Federal government appropriate Center staff or other law enforcement agencies, with ICE approval, may have access to resident files for official purposes.

Unless the Center Administrator or designee determines otherwise, each borrowed file must be returned by the end of the administrative workday.

At a minimum, a logbook entry recording the file's removal from secure storage will include the following information:

- The head of household's name and their assigned A-File number;
- Date and time removed;
- Reason for removal;
- Signature of person removing the file, including title and department;
- Date and time returned; and
- Signature of person returning the file.

Upon request by the resident, a copy of the file will be provided to the resident or his/her designated attorney of record. Seek assistance from JFRMU for non-routine requests.

### **F. Electronic Files**

Electronic record keeping systems and data will be protected from unauthorized access. All electronic file data is subject to the same Privacy Act regulations as the contents of traditional paper resident files.



## **G. Identity Documents**

Centers will process found identity documents in accordance with the ICE Family Residential Standard on *Admission and Release*.

## **References**

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes

## 7.2 News Media, Interviews, and Tours

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that the public and the media are informed of events within the Center's areas of responsibility through interviews and tours.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. The public and the media will be informed of operations and events within the Center's areas of responsibility.
2. Resident and staff privacy will be protected, including the right of a resident not to be photographed or recorded.
3. All other guidance provided by ICE regarding external visits and tours by external stakeholders (including members of Congress and Congressional staff) will be followed.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *News Media, Interviews, and Tours* dated 12/21/2007.

## 7.2 News Media, Interviews, and Tours

### Expected Practices

#### A. News Media Interviews and Tours

##### 1. General

ICE/Enforcement and Removal Operations (ERO) supports the provision of public access to non-classified, non-sensitive, and non-confidential information about its operations in the interest of transparency. Access will not be denied based on the political or editorial viewpoint of the requestor.

ICE/ERO also has a responsibility to protect the privacy and other rights of residents, including the right of a resident not to be photographed or recorded.

By regulating interviews in this setting, the Center Administrator ensures safe and secure Center operations.

Interviews by reporters, other news media representatives, nongovernmental organizations, academics, and parties not included in other visitation categories in the ICE Family Residential Standard on *Visitation* will be permitted access to Centers only by special arrangement and with prior approval of the respective Field Office Director (FOD), and with notification to Juvenile and Family Residential Management Unit (JFRMU) Chief. The FOD may designate Public Affairs Officers (PAOs) to serve in Field Offices as liaisons with media representatives for some or all requests and communications covered by this standard.

##### 2. Media Representatives

The term “media representative” is intended to refer to persons whose principal employment is to gather, document, or report news for any of the following entities:

- A newspaper that circulates among the general public and publishes news of a general interest (e.g., political, religious, commercial, or social affairs);
- A news magazine with a national circulation sold to the general public by newsstands and mail subscriptions;
- A national or international news service;
- A radio or television news program of a station licensed by the Federal Communications Commission; or
- Other representatives or entities that gather information in accordance with the definition of “representative of the news media” contained in the Freedom of Information Act (5 U.S.C. § 552(a)(4)(A)(ii)) as amended by section 3 of P.L.110-175.

In addition to those persons listed above, such representatives may include, but are not limited to, individuals reporting for certain electronic media outlets, online media publications, and other media freelance journalists.

For the purpose of this standard, nongovernmental organizations (NGOs), academics, and parties not included in other visitation categories in the ICE Family Residential Standard on *Visitation* will be treated as media representatives.

## **7.2 News Media, Interviews, and Tours**

### **3. Media Visits and Tours**

Media representatives may request advance appointments to tour Centers, according to the stipulations outlined in this section.

To tour a Family Residential Center, visitors will contact the ICE Office of Public Affairs (OPA) or the FOD. The OPA will relay the outcome of the request to the media representative once the FOD has made a determination and set any additional guidelines for the interview/tour to take place.

Prior to the tour, visitors will receive the terms and guidelines of the tour in writing.

Visitors will abide by the policies and procedures of the Center being visited or toured. Failure to abide by these policies and procedures could result in termination of the visit and denial of future tour/visit requests.

Visitors must obtain advance permission from the Center Administrator and FOD before taking photographs in or of any Center. Residents have the right not to be photographed (still, movie, or video), and not to have their voices recorded by the media. Thus, the Center Administrator will advise both visitors and residents that use of any resident's name, identifiable photo, or recorded voice requires that individual's prior permission. Media representatives will provide ICE/ERO with the resident's signed resident release before photographing or recording the resident's voice. When the resident is a minor, the media representative also will provide ICE/ERO with a signed release by the minor's parent/guardian before photographing the minor or recording his/her voice. The original form will be filed in the resident's alien file (A-file) with a copy placed in the Center's file.

If the presence of video, film, or audio equipment or related personnel poses a threat to the safe and secure operations of the Center, its staff, or its residents, then the JFRMU Chief or the FOD may limit or prohibit such access. For example, the JFRMU Chief or the FOD may limit the equipment to hand-held cameras or recorders.

During and after an emergency, or when indications exist that extra security measures may be needed due to a possible disturbance in the Center, the FOD may suspend visits for an appropriate period.

### **4. Personal Interviews**

A media representative or member of the public, including NGOs and academics, planning to conduct a personal interview at a Center will submit a written request to the responsible FOD, preferably 48 hours prior to, and no fewer than 24 hours prior to, the time slot requested. The FOD may waive the 24-hour rule if convinced of the need for urgency.

Staff will inform the resident of the interview request. Before the FOD considers the interview request, the resident must then indicate his/her willingness to be interviewed by signing a consent form. The original written consent will be filed in the resident's A-file, and a copy will be placed in the Center's file. When the resident is a minor, the media also will submit a signed release by the minor's parent/guardian before consideration.

When the resident is part of a controversy or of a special interest or high-profile case, the FOD will consult with ICE/ERO Headquarters Management and the local ICE OPLA before deciding whether to allow the interview.

## 7.2 News Media, Interviews, and Tours

Appendix 7.2.A: News Interview Authorization provides a sample “News Interview Authorization” form that may be used. The original of the form will be filed in the resident’s A-file with a copy in the Center’s file. Residents should neither be pressured nor coerced out of granting the interview request, nor should the Center in any way retaliate against a resident for lawful communication with a member of the media or a member of the public.

The Field Office normally will act in writing within 48 hours of the written request. Possible reasons for disapproval may include, but are not limited to, the following situations:

- The news media representative or news organization he/she represents or the visitor does not agree to the conditions established by this policy or has previously failed to abide by them.
- The resident is physically or mentally unable to participate, as indicated by the statement of the Center’s Clinical Medical Authority.
- The FOD finds it probable that the proposed interview may endanger the health or safety of the interviewer, cause serious unrest within the Center, or disturb safe and secure Center operations.
- The resident is involved in a pending court action and the court with jurisdiction over the matter has issued a gag rule, or the FOD, after consultation with the Office of the Principal Legal Advisor (OPLA), thinks the proposed interview could affect the outcome of the court case.

If the requesting party believes the request was denied unfairly or erroneously, then the requesting party may contact ICE/ERO headquarters. A media request will not delay or otherwise interfere with the admission or departure of residents. Consequently, the routine processing of residents will take precedence over resident interviews.

Interviews will take place during normal business hours in a location determined by the Center Administrator. The Center Administrator will provide a location conducive to the interviewing activity, consistent with safe and secure Center operations. The FOD may limit the number of interviews with a particular resident to a reasonable number per month. Further, if interviews are imposing a serious strain on staff or Center resources, then the FOD may restrict the time allotted for interviews.

For Center safety and security, ICE/ERO reserves the right to monitor, but not participate in, resident interviews.

A media representative interested in touring the Center and photographing or recording any other residents in conjunction with an individual interview must follow all applicable requirements and procedures, and will indicate this interest at the time of his/her request for an interview.

### 5. Press Pools

A press pool may be established when the PAO, FOD, and Center Administrator determine that the volume of interview requests warrants such action.

## 7.2 News Media, Interviews, and Tours

In such an event, the PAO will notify all media representatives with pending or requested interviews, tours, or visits that, effective immediately and until further notice, all media representatives must comply with the press pool guidelines established by the FOD.

All material generated from such a press pool must be made available to all news media, without right of first publication or broadcast.

The press pool will comprise one member each from the following groups:

- A television outlet (for video);
- A radio network outlet;
- A print outlet; and
- A still photographer.

Each group will choose its representative for the press pool. The FOD will, upon request, provide the media information about a resident, provided such information is a matter of public record and not protected by privacy laws, U.S. Department of Homeland Security policy, or ICE/ERO policy. Security and safety concerns for staff and residents require that specific discharge-related data remain confidential.

### 6. Special Conditions for Media Representatives

To be approved to interview or visit a resident or tour a Center, the media representative must certify that he/she is familiar with and accepts the rules and regulations governing media conduct. He/she must at all times comply with those rules and regulations.

Media representatives will collect information only from a primary source, and will neither solicit nor use personal information from one resident about another who is unwilling to be interviewed.

A media request may not delay or otherwise interfere with the admission, in-processing, or departure of any resident. Routine processing of ICE residents will take precedence over media interviews. Media representatives may discuss with the PAO objections, suggestions, exceptions, and general issues concerning the applicability of any rule, regulation, or order in advance of the interview or visit.

## B. NGO and Other Agency Stakeholder Center Tours, Visitation, or Tours with Visitation

For the purpose of this standard, NGOs, academics, and parties not included in other visitation categories in the ICE Family Residential Standard on *Visitation* will be treated as media representatives.

ICE Centers will maintain an open and transparent approach to immigration enforcement through managed access of stakeholders participating in approved tours, visits, or tours with visitation. All tour and visit requests will be governed by this standard and other applicable ICE policies or procedures on NGO and/or stakeholder access to Centers.

## 7.2 News Media, Interviews, and Tours

All requests by NGOs and other stakeholders (which include, but are not limited to, community service organizations, intergovernmental entities, faith-based organizations, members of academia, and legal groups (e.g., *pro bono* legal service provider groups)) for tours, visits, or tours with visits must be submitted in writing to the local ICE/ERO Field Office supervising the Center or the ICE Office of State, Local, and Tribal Coordination. Tour requests should not be directed to the Center.

All requests will be forwarded to the FOD for review. When deciding whether to approve or deny the request, the FOD or his/her designee will take into consideration safety and security, and the availability of personnel to staff the tour, visitation, or tour with visitation. All tour or visit participants will be expected to submit personal information required by applicable ICE policies, so ICE/ERO can perform background checks as necessary.

When requesting visitation or a tour with visitation, stakeholders may pre-identify any resident with whom they may wish to speak by providing the Field Office with a list of specific residents in advance. Stakeholders are not required to pre-identify a resident with whom they may wish to meet during their tour and/or visit. To meet with residents who have not been pre-identified, stakeholders will provide to ICE/ERO a sign-up sheet for residents to indicate that they wish to meet with the stakeholder.

All stakeholders will provide ICE/ERO a completed tour/visitation notification flyer and a signed ICE Stakeholder Visitor Code of Conduct form or its equivalent.

If the tour/visit is approved, then the Center will post both the ICE/ERO sign-up sheet and the ICE/ERO stakeholder tour/visit notification flyer at least 48 hours in advance of the tour or visitation in appropriate locations (e.g., Resident Information Centers, living and activity areas). Center staff also may make appropriate oral announcements to residents about the upcoming tour/visit (e.g., announcement during meal times). Center staff is not required to inform a resident's attorney that a stakeholder will tour/visit the Center or to oversee the content of the consent form or ensure that the resident and the stakeholder have completed it.

On the day of the visitation, the Center staff will give the NGO or stakeholder access to pre-identified residents and/or to residents who have signed up in advance to speak with the stakeholder. The Center staff will arrange for the visitation to occur in a pre-determined living and activity area or space.

The Center staff may maintain a physical presence in the meeting room to maintain safety and security.

To ensure security and avoid any disruptions in daily operations, all NGOs and other stakeholders touring and/or conducting visitation with residents will maintain proper and appropriate decorum, adhere to applicable ICE/ERO and Center standards, and may be asked to sign a code of conduct form.

This standard does not apply to: (1) Legal Orientation Program or Know Your Rights presentation providers; (2) law firms, organizations, or sole attorney practitioner providing or seeking to provide legal representation; and (3) health care practitioners with a request from a resident's counsel to conduct an examination relevant to the resident's case.



## **7.2 News Media, Interviews, and Tours**

### **References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Visitation

## 7.3 Staff Training

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that Center staff, contractors, and volunteers are competent in their assigned duties by requiring that they receive initial and ongoing training.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Key positions are approved by ICE prior to hiring and job placement.
2. In cooperation with ICE, Centers will conduct a background investigation to determine whether any/all candidates for hire as staff members, contractors, and volunteers who may have contact with residents is suitable for employment with the Center, including a criminal background records check.
3. Before assuming his or her duties, each new full-time employee, contractor, or volunteer will receive training in the mandatory subjects listed herein, a Center orientation, and training on the current ICE Family Residential Standards, *Flores* Settlement Agreement, DHS PREA requirements, and other applicable state standards.
4. Full-time staff, contractors, and volunteers working in Centers when ICE Family Residential Standard revisions are disseminated will be given 30 days to complete training on those revisions.

**7.3 Staff Training**

5. All part-time staff, contractors, and volunteers will receive formal orientation training appropriate to their assignments. Any part-time, volunteer, or contract personnel working more than 20 hours per week will receive training appropriate to their position and commensurate with their full-time colleagues.
6. Training for staff, contractors, and volunteers will be provided by instructors who are qualified to conduct such training.
7. Staff, contractors, and volunteers who have minimal resident contact (such as clerical and other support staff) will receive initial and annual training commensurate with their responsibilities.
8. All staff, contractors, and volunteers who have *any* contact with residents must at least be trained on the Center's (and ICE's) zero tolerance policy for sexual abuse and assault, and on how to report allegations or suspicions of sexual abuse and assault.
9. All staff, including management, supervisory, professional, support, security, and health care staff, contractors, and volunteers who have regular or daily contact with residents, or who have significant responsibility involving residents, will receive initial and annual training commensurate with their positions.
10. In addition to the training requirements outlined in this Standard, staff and contractors will be encouraged to continue their education and professional development through incentives such as salary enhancement, reimbursement of costs, and administrative leave.
11. Personnel and contractors assigned to any type of emergency response unit or team will receive initial and annual training commensurate with these responsibilities including annual refresher courses on emergency procedures and protocols.
12. Personnel and contractors authorized to use chemical agents and electronic control devices (ECD) will receive thorough training in their use and in the treatment of individuals exposed to a chemical agent or ECD.
13. Security staff and contractors will be trained in self-defense procedures and use of physical control measures to include confrontation avoidance, de-escalation techniques, and emergency protocols.
14. New staff, contractors, and volunteers will acknowledge in writing that they have reviewed Center work rules, ethics requirements, regulations, conditions of employment, and related documents, and a copy of the signed acknowledgement will be maintained in each person's personnel file.
15. Staff, contractors, and volunteers will be properly qualified and will receive appropriate security clearances, including any State-required background checks for individuals working with minors, prior to beginning work in any Center.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Staff Hiring and Training* dated 12/21/2007.

## Expected Practices

### A. Overview of Training

The Center Administrator will ensure that the Center conducts appropriate orientation and initial, ongoing, and annual training for all staff, contractors, and volunteers, with appropriate assessment measures consistent with this and other ICE Family Residential Standards.

Centers may contact the respective ICE ERO Field Office for access to U.S. Department of Homeland Security (DHS) training resources (e.g., DHS Office for Civil Rights and Civil Liberties training modules).

The amount and content of training will be consistent with the duties and function of each staff member, contractor, or volunteer and the degree of direct supervision that individual will receive.

The Center Administrator will assign at least one qualified individual, with specialized training for the position, to coordinate and oversee the staff development and training program. At minimum, training personnel will complete a 40-hour training-for-trainers course. In some Centers, this may be a collateral duty because of Center size.

The Training Coordinator will develop and document a Center training plan that is reviewed and approved annually by the Center Administrator and the ICE ERO Juvenile and Family Residential Management Unit (JFRMU) Chief. The Center Administrator will ensure that:

- Training is conducted by trainers certified in the subject matter. This is particularly important in life-safety subject areas such as chemical agents, ECDs (as applicable), self-defense, prohibited physical control measures or restraints, child welfare, emergency response, and first aid and cardiopulmonary resuscitation (CPR);
- Each trainee will be required to pass a written or practical examination to ensure the subject matter has been mastered. This is particularly important in life-safety subject areas such as chemical agents, ECDs (as applicable), self-defense, prohibited physical control measures and restraints, child welfare emergency response, first aid and CPR, and in ethical conduct;
- The formal training received by each trainee will be documented fully in permanent training records; and
- Formal certificates of completion will be issued and kept in the appropriate Center files.

### B. Initial, Ongoing, and Annual Training

Initial training will be provided to all staff, contractors, and volunteers, and must be completed prior to the staff member, contractor, or volunteer assuming his or her duties. Completion of initial and ongoing training will be documented and records will be maintained in personnel files.

**7.3 Staff Training**

Training completion will be subject to monitoring and audit by the JFRMU Chief. In addition to training requirements for State licensing, staff, contractor, and volunteer training will include areas relevant to the care of families with a special emphasis on minors. Ongoing and annual refresher trainings will be offered as appropriate.

Training subjects and requirements for all staff, whether full-time, part-time, contractor, or volunteer, will be commensurate with their position.

The training programs will include, at a minimum:

**1. ICE Family Residential Standards, Updates, and Overview of Center Operations**

- An overview of all standards, updates, and Center operations.
- Flores Settlement Agreement.
- Other applicable State, local, and/or other requirements.

**2. Staff Conduct**

- Prohibition against staff or contractors providing legal advice or legal counsel;
- Code of ethics;
- Drug-free workplace;
- Staff rules and regulations;
- Confidentiality requirements;
- Appropriate conduct with residents;
- Avoiding inappropriate relationships with residents; and
- Supervision of residents.

**3. Communication and Problem Solving**

- How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, and gender nonconforming residents, as well as those diagnosed with gender dysphoria;
- Behavior management approaches, including conflict resolution, de-escalation, and counseling techniques;
- Problem solving, negotiation, applying choices, and rewards and consequences;
- Communication skills (e.g., interpersonal relations, resident communication);
- Cultural awareness, competency, acculturation, and sensitivity (e.g., social and cultural lifestyles of residents, differences between residents and inmates);
- Executive Order 13166 (language access) and language issues including the requirement of meaningful access for limited English proficient residents, and language identification and assistance requirements; and

- The provisions of Federal and state law (as applicable) and Center policy governing equal access for residents with disabilities, including the actions that must be taken when encountering residents who may require accommodations or modifications to attain equal access to Center programs or activities, as well as the requirement to provide auxiliary aids or services as needed to ensure effective communication for residents with disabilities.

#### 4. Health, Safety, and Security

- Occupational Safety and Health Administration (OSHA) or equivalent course that covers blood-borne pathogens, airborne pathogens, employee/resident safety, environmental health conditions, and other issues related to occupational exposure;
- CPR, first aid, automated external defibrillators, if located at the Center, and other health-related emergencies;
- Emergency and non-emergency medical procedures;
- Climate monitoring;
- Signs of suicide risk and suicide precautions, prevention, and intervention;
- Signs of and responses to hunger strikes;
- De-escalation and confrontation avoidance techniques;
- Use of physical control measures and restraint techniques;
- Self-defense techniques;
- Accommodations for residents with disabilities and other residents with special needs;
- Permitted search practices;
- Personal protective equipment;
- Hazardous waste disposal;
- Safety and security procedures and regulations;
- Key and lock control;
- Emergency preparedness and emergency plans , implementation, and procedures;
- Hostage situations and staff and contractor conduct if taken hostage;
- Use of video equipment and recording devices;
- Admissions processing and housing classification;
- Confidentiality requirements to include medical and mental health treatment;
- All training requirements listed in the Department of Homeland Security (DHS) *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities* (Mar. 7, 2014), 6 CFR § 115, *et seq.* (“DHS PREA”), including the sections on juveniles; ICE’s and the Center’s zero-tolerance policy for all forms of sexual abuse or assault, to include sexual harassment and sexual misconduct; and the right of residents, staff, contractors, and

volunteers to be free from sexual abuse, and from retaliation for reporting sexual abuse (see also ICE Policy No. 11062.2, *Sexual Abuse and Assault Prevention and Intervention* (May 22, 2014));

- Signs and symptoms of depression and post-traumatic stress disorder; and
- Gender- and trauma-informed approaches when encountering residents.

#### 5. Specific to Children and Families

- Common health and mental health diagnoses of children;
- Child health and welfare;
- Child development theory;
- Child trafficking and smuggling;
- Federal, state, and local child abuse reporting requirements; and
- Care of children when parent is unavailable.

#### 6. Other/Administrative

- ICE Family Residential Standards and Center orientation;
- Overview of asylum and other protections from removal;
- Report writing and documentation;
- Education, recreation, and other activities available to residents;
- Resident handbook including rules, regulations, and rights; and
- Grievance procedures and protocols, including medical and emergency grievances.

Additionally, Centers must adhere to other ICE Family Residential Standards that mandate more frequent training requirements and any applicable State training and/or licensing requirements.

### C. Continued Education and Professional Development

Staff will be encouraged to continue their education and professional development through incentives such as salary enhancement, reimbursement of costs, and administrative leave.

## References

- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Emergency Plans
- ICE Family Residential Standard on Environmental Health and Safety
- ICE Family Residential Standard on Admissions and Release
- ICE Family Residential Standard on Key and Lock Control
- ICE Family Residential Standard on Searches



**7.3 Staff Training**

- ICE Family Residential Standard on Sexual Abuse and Assault Prevention and Intervention
- ICE Family Residential Standard on Use of Physical Control Measures and Restraints
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Health Care (Females)
- ICE Family Residential Standard on Significant Self-harm and Suicide Prevention and Intervention
- ICE Family Residential Standard on Disability Identification, Assessment, and Accommodation
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Grievance System

## 7.4 Resident Transfers

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard is written to ensure that transfers of residents from one Center to another are accomplished in a manner that ensures the safety and security of the staff, residents, and the public; and that the process relating to the transfer of residents is carried out professionally and responsibly with respect to notifications, resident records, and the protection of resident funds and property. This standard also ensures compliance with the ICE/Enforcement and Removal Operations (ERO) Detainee Transfer Directive.

Various terms used in this standard may be defined in ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Decisions to transfer residents are made by the Field Office Director (FOD) or his/her designee on the basis of complete and accurate case information and principles set forth in the ICE/ERO Detainee Transfer Directive, other applicable ICE/ERO policies, and any applicable court orders. All resident transfers and transfer determinations will be based on a thorough and systematic review of the most current information available from ICE/ERO.
2. When residents have legal representation, the representative will be notified prior to transfer of the resident. In the case of compelling or unusual circumstances, the legal representative may be notified no later than 24 hours after the transfer. Contacting the legal representative will be the responsibility of ICE/ERO.

**7.4 Resident Transfers**

3. The resident will be informed of the transfer orally and in writing in a language or manner that he/she can understand, immediately prior to transport.
4. Transporting staff, as well as sending and receiving Center staff, will have accurate and complete records for each transferred resident.
5. Transfers of residents will be accomplished safely and securely.
6. Residents with special health care considerations will be transferred with appropriate medical and referral information, including appropriate medications to ensure continuity of care. All transfers will take into consideration the medical and mental health care requirements of the resident. Residents who are infected with airborne or other infectious pathogens, or who are displaying signs and symptoms of airborne pathogens, or as medically indicated require isolation, will be assigned to a respiratory isolation unit or other medically appropriate isolation unit, determined by a Center's Clinical Medical Authority (CMA) until such time as the transfer is medically approved for transport. Transporting staff will be instructed in the proper transportation techniques for transporting residents diagnosed with, or suspected of, infectious disease.
7. Transferred resident funds, valuables, and other personal property will be safeguarded and transported in accordance with the ICE Family Residential Standard on *Transportation (by Land)*, the ICE Family Residential Standard on *Admission and Release*, and the ICE Family Residential Standard on *Funds and Personal Property*.

## Standards Affected

This standard replaces the ICE Family Residential Standard on *Transfer of Residents* dated 12/21/2007.

## Expected Practices

### A. Responsibilities of ICE/ERO

Decisions to transfer residents will be approved by the FOD or his/her designee on the basis of complete and accurate case information and principles set forth in the ICE/ERO Detainee Transfer Directive, other applicable ICE/ERO policies, and any applicable court orders.

Staff will conduct transfers in accordance with the ICE Family Residential Standard on *Transportation (by Land)*. They also must adhere to the ICE Family Residential Standard on *Funds and Personal Property* while conducting transfer details.

Attorney notifications relative to resident transfers are the responsibility of ICE/ERO, which will make attorney notifications in accordance with the ICE/ERO Detainee Transfer Directive and other applicable ICE/ERO policies. Flores Class Members: Consistent with the Flores Settlement Agreement (paragraph 27) "no minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within

**7.4 Resident Transfers**

24 hours following the transfer.” ERO ICE is responsible to provide this notice and to document that notice was given both in the A-file and in EARM. An email notification is preferable with a copy included in the A-file and a similar notation in EARM indicating the email address to which the notice was sent. Staff at the sending Center will ensure that residents scheduled for transfer are not permitted telephone or email access once the resident has been notified of the transfer.

Furthermore, staff will ensure that residents scheduled for transfer do not have contact with the general population prior to the transfer.

ICE/ERO will notify residents of their impending transfer after the resident is placed in a suitable location away from the general population and immediately prior to the transfer. ICE/ERO will notify the resident that they are being transferred to another Center, that this is not a transfer for discharge, and that they may place a domestic telephone call, at no expense to the resident, after arrival at the new Center.

ICE/ERO will ensure that the Resident Transfer Notification (Appendix 7.4.A: Resident Transfer Notification) is completed and signed by both the resident and a witnessing staff member. The notification will take place in a language or manner that the resident understands. The completed form will be given to the resident and a copy will be placed into the resident’s alien file (A-file).

Staff will ensure that all resident funds, valuables, and property are returned to the resident and properly documented prior to departure.

Processing supervisors will ensure that transporting staff are advised of any precautions provided by ICE/ERO, the Center CMA, or Center staff regarding any special considerations relative to residents to be transported.

Transporting staff will read their instructions and discuss contingency plans with a supervisor and/or respective Field Office before departure.

Prior to transferring residents, ICE/ERO should review all cases to make sure the transfer is necessary. Residents should not be considered for transfer if: they have immediate family in the area of responsibility; there is an attorney of record (Form G-28 on file) pending or currently in proceedings with the Executive Office for Immigration Review (EOIR); and/or they have been granted a bond or have been scheduled for a bond hearing. Before a transfer is made where any of these factors exist, the transfer must be approved at the Assistant FOD level or higher.

A transfer may be deemed necessary by the FOD or his/her designee for any of the following reasons: to provide appropriate medical care; to fulfill an approved transfer request by the resident; and/or for the safety and security of the resident, other residents, Center personnel, or ICE staff, or at the discretion of the agency.

**Orantes Class Members.** ICE is prohibited from transferring Salvadoran class members who are not represented by counsel from the district of their immigration arrest for at least seven days, to afford them the opportunity to secure counsel. The only exception to this rule applies to Salvadorans who are not eligible to apply for asylum such as individuals with final orders of removal or reinstatement of prior removal orders.

**Flores Class Members:** Consistent with the Flores Settlement Agreement (paragraph 27) “no minor who is represented by counsel shall be transferred without advance notice to such

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counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following the transfer.” ICE/ERO is responsible to provide this notice and to document that notice was given both in the A-file and in EARM. An email notification is preferable with a copy included in the A-file and a similar notation in EARM indicating the email address to which the notice was sent.

**B. Responsibilities of the Sending Center—Notifications****1. Communications with Receiving Center**

ICE/ERO will not conduct a resident transfer unless a Form G-391 has been properly issued. ICE/ERO will ensure that: Forms G-391 (“Official Detail”) and I-216 (“Record of Persons and Property Transfer”) are completed; Form G-391 is properly signed and clearly indicates the names of the residents, the place or places they are to be escorted, and that all the relevant forms have been prepared and properly authorized with appropriate signatures; and said forms accompany the transfer. If the Center Administrator or his/her designee believes that a scheduled transfer of a resident should not take place, then the Center Administrator will notify ICE/ERO prior to the transfer.

**2. Resident/Attorney Notification**

Immediately prior to transfer, the sending Center will ensure that the resident and attorney of record is informed, in a language or manner he/she can understand, that he/she is being transferred to another Center and is not being removed (if applicable).

The sending Center will ensure that specific plans and time schedules are not discussed with residents and that following notification, the resident:

- Is not permitted to make or receive any telephone calls until the resident reaches the destination Center; and
- Does not have contact with any resident in the general population until the resident reaches the destination Center.

At the time of the transfer, the sending Center will provide the resident, in writing, the name, address, and telephone number of the Center to which he/she is being transferred, using the Appendix 7.4.A: Resident Transfer Notification Form.

- When residents have legal representation, the representative will be notified prior to transfer of the resident. In the case of compelling or unusual circumstances, the legal representative may be notified no later than 24 hours after the transfer. Contacting the legal representative will be the responsibility of ICE/ERO.

Notification to the attorney should include reason for transfer, name, location, and telephone number of the new facility. Notification should be done as soon as practical but no later than 24 hours after the transfer.

The sending Center will ensure that the resident acknowledges, in writing, that:

**7.4 Resident Transfers**

- He/she has received the transfer destination information;
- It is his/her responsibility to notify family members if so desired, upon admission into the receiving Center; and
- He/she may place a domestic telephone call, at no expense to the resident, upon admission into the receiving Center.

The sending Center will place a copy of the “Resident Transfer Notification” form, or its equivalent, in the resident’s file.

ICE/ERO should update and document the resident’s A-file accordingly.

**3. Notification to the Health Services Administrator (HSA)**

Upon receipt of an authorization to transfer a resident from ICE/ERO, the sending Center staff will notify the Center HSA so that he/she can prepare a medical transfer summary sheet and any other needed medical documentation or actions as listed in the ICE Family Residential Standard on *Health Care*. The Center’s HSA will notify the Center Administrator and ICE/ERO when a resident’s physical or mental condition requires clearance by the Center’s health care provider prior to transfer, or medical escort and specialized care (e.g., dialysis) during or immediately following transfer.

**4. Preparation for Transfer and Notification to Escorting Staff Members**

The sending Center will ensure that a properly executed Form I-203 or I-216 accompanies the transfer.

The sending Center will ensure that escorting staff members are advised of any security considerations relative to residents being transported so that escorting staff members can take necessary precautions.

**5. Food and Water during Transfer**

Food and water will be provided in accordance with the ICE Family Residential Standard on *Transportation (by Land)* and the ICE Family Residential Standard on *Food Service*. The sending Center is responsible for the preparation and delivery of proper meals prior to departure.

**C. Responsibilities of the HSA at the Sending Center****1. Transfer of the Resident’s Medical Record**

When a resident is transferred within the ICE Health Service Corps (IHSC) system, ICE/ERO will ensure that the resident’s full medical record, if it is sent, includes Form IHSC-849 (“Medical/Mental Health Transfer Summary”), which should be placed in a sealed envelope or other container labeled with the resident’s name and alien number (A-number) and marked “MEDICAL CONFIDENTIAL.”

When a resident is transferred to a Center, the sending Center will ensure that the Transfer Summary accompanies the resident. Upon request of the receiving Center, the sending Center will transmit a copy of the resident’s full medical/dental record within 10 business days or sooner if the receiving Center determines the resident has a medically urgent matter.

Upon arrival at the receiving Center, transporting staff will deliver any medications to the receiving Center’s medical personnel.

**7.4 Resident Transfers****2. Medical/Mental Health Transfer Summary**

The sending Center's medical staff will prepare a Form IHSC-849 that must accompany the resident. The summary form will include:

- Tuberculosis (TB) clearance, including Purified Protein Derivative (PPD) with the test dates, and chest X-ray results if the resident has received a positive PPD reading;
- Current mental and physical health status, including all significant health issues;
- Current medications, with specific instructions for medications that must be administered en route;
- Any pending medical or mental health evaluations, tests, procedures, or treatments for a serious medical condition scheduled for the resident at the sending Center; and
- The name and contact information of the transferring medical official.

**3. Notification of Medical/Psychiatric Alerts or Holds**

Upon receiving notification that a resident is to be transferred, appropriate medical staff at the sending Center will notify the Center Administrator of any medical/psychiatric alerts or holds that have been assigned to the resident, as reflected in the resident's medical records. The Center Administrator will be responsible for providing notice to ICE/ERO of any medical/psychiatric alerts or holds placed on a resident that is to be transferred.

**4. Medical Holds**

If a resident has been placed in a medical hold status, then the resident must be evaluated and cleared by a licensed independent practitioner prior to transfer. If the evaluation indicates that transfer is medically appropriate but that health concerns associated with the transfer remain, then medical staff at the sending Center will notify ICE and will provide requested information and other assistance, to the extent practicable, to enable ICE to make appropriate transfer determinations.

**5. Medical Escort**

The CMA or designee must inform the Center Administrator in writing if the resident's medical or psychiatric condition requires a medical escort during transfer.

**6. Medications**

Prior to transfer, medical staff will provide the transporting staff members instructions and, if applicable, medications for the resident's care in transit.

Medical staff will ensure that the resident is transferred with, at a minimum, 7 days' worth of prescription medications (for TB medications, up to 15 days' supply) to guarantee the continuity of care throughout the transfer and subsequent intake process.

Medication will be:

- Placed in a property envelope labeled with the resident's name and A-number and appropriate administration instructions;
- Included in the transfer; and



**7.4 Resident Transfers**

- If unused, turned over to the receiving medical personnel.

## **D. Responsibilities of the Sending Center Relative to Residents' Property Prior to Transport**

Before transferring a resident, the sending Center's processing staff will ensure that all funds and small valuables are properly documented on Forms G-589 and I-77.

### **1. Funds and Small Valuables**

Before transfer, the sending Center will return all funds and small valuables to the resident and close out all G-589 forms in accordance with the ICE Family Residential Standard on *Funds and Personal Property*.

During transport, a resident ordinarily will have the following items in his/her possession (items that might present a security risk or are particularly bulky may be transported separately in the vehicle's storage area):

- Cash;
- All legal material;
- Small valuables such as jewelry;
- Address books, telephone lists;
- Correspondence;
- Dentures and prescription or reading glasses;
- Small religious items;
- Photos;
- Toys, games, and/or children's books; and
- Similar small personal property items.

The receiving Center will create a new G-589 form during admissions in-processing in accordance with the ICE Family Residential Standard on *Funds and Personal Property*.

### **2. Large Valuables, Excess Luggage, and Other Bulky Items**

Resident access to large items of personal property during transport is prohibited; however, ordinarily, all items stored at the sending Center will accompany the transferee to the receiving Center.

In accordance with the ICE Family Residential Standard on *Funds and Personal Property*, if the property accompanies the resident, then:

- The sending Center will close out all G-589 forms; and
- The receiving Center will create new G-589 and I-77 forms during admissions in-processing.

If the receiving Center does not accept excess, oversized, or bulky belongings (including, but not limited to, suitcases, cartons, televisions, etc.), then the sending Center will arrange to store the

**7.4 Resident Transfers**

property elsewhere, or process the excess property in accordance with ICE/ERO standard operating procedures.

If the adult resident is unable to provide an appropriate mailing address or is financially able but unwilling to pay for shipping, then ICE/ERO may dispose of the property after providing the resident written notice in accordance with ICE/ERO standard operating procedures.

If the resident cannot provide an appropriate address because one does not exist, then the resident will keep the property receipts for the stored items, and the sending Center will store the property and notify the receiving Center in writing that the sending Center requires notice before the resident's discharge or further transfer, to ensure the resident receives the stored property.

**E. Responsibilities of the Transporting Staff Member**

The transporting staff member may not transport a resident without the required documents, including:

- The Medical/Mental Health Transfer Summary; and
- A properly executed Form I-203 or I-216.

The transporting staff member will review the information for completeness and to make sure that he/she has the supplies required to provide any in-transit care that is indicated.

Any transporting staff member who reviews the Medical/Mental Health Transfer Summary will protect the privacy of the resident's medical information to the greatest extent possible and may not share medical information unless necessary to fulfill transportation responsibilities safely.

The transporting staff member is responsible for delivering the Medical/Mental Health Transfer Summary to staff at the receiving Center and will advise them of any medications provided to the resident in transit.

The receiving Center must report any exceptions to the ICE/ERO Field Office.

**F. Post-transfer Activities**

After admission into the receiving Center or Field Office, all residents must be offered the opportunity to make one domestic telephone call, for at least 3 minutes in length at no cost to the resident.

The responsible processing supervisor or his/her designee will ensure that the resident is informed promptly that he/she may notify interested persons of the transfer. The offer to make a domestic call, as referenced above, will be documented and signed by processing staff and by the resident. A copy of the documentation verifying that a resident was offered a 3-minute telephone call will be filed in the resident's file.

**References**

- ICE Family Residential Standard on Admission and Release

**7.4 Resident Transfers**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Food Service
- ICE Family Residential Standard on Funds and Personal Property
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Transportation (by Land)
- Detainee Transfer Directive issued January 4, 2012
- National Commission on Correctional Health Care, Standards for Health Services in Jails

## 7.5 Post Orders

### Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects residents and staff, and maintains safe and secure Center operations by ensuring that each staff member assigned to a post, or particular area of responsibility, knows the procedures, duties, and responsibilities of that post.

Various terms used in this standard may be defined in ICE Family Residential Standard on *Definitions*.

### Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

#### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

### Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

- Each staff member will have current written Post Orders that apply specifically to the assigned post, with step-by-step procedures written in sufficient detail to guide a staff member assigned to that post for the first time.
- Signed and dated records will be maintained to show that assigned staff members acknowledge that they have read and understood the Post Orders.
- Post Orders will be formally reviewed annually, and updated as needed.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Post Orders* dated 12/21/2007.

## Expected Practices

### A. Post Orders Required

The Center Administrator will ensure that:

- There are written Post Orders for each security post;
- Copies are available to all employees;
- Written Center policy and procedures exist, which:
  - Provide official on-duty time for staff members to read the applicable Post Orders when assigned to a post; and
  - Ensure that staff members read those applicable Post Orders prior to assuming their posts.
- As needed, Post Orders for non-permanent assignments (e.g., details, temporary living areas, emergencies) are developed in advance or as soon as possible after the need arises.

### B. Reading and Understanding Post Orders

Staff members and supervisors will use the Post Orders to familiarize themselves with the duties for which they are responsible and to remain situationally aware of changes that occur in the operation and duties of that post. Even in the event that a staff member has worked a post in the past, he/she will assume the Post Orders have changed, and will be required to read and comprehend all Post Order documents upon assuming their posts.

Supervisors will ensure that staff members understand the Post Orders, regardless of whether the assignment is temporary, permanent, or due to an emergency.

### C. Preparation of Post Orders

The Security Manager will supervise the preparation of all Post Orders, which will:

- Be based on ICE/Enforcement and Removal Operations (ERO) Standards, ICE/ERO policies, and Center practices and policies; and
- Specifically state the duty hours for each post.

The Center Administrator (or designee) will:

- Approve, sign, and date each Post Order on the last page of each section;
- Initial and date all other pages; and
- Initial and date any subsequent changes to the Post Order.

### D. Format of Post Orders

The Post Orders for each post will be issued in a six-part classification folder and will be organized as follows:

**7.5 Post Orders**

Section 1: Specific Post Orders, listing activities chronologically, with responsibilities clearly defined;

Section 2: Special instructions, if any, relating to the specific post;

Section 3: General Post Orders applicable to all posts;

Section 4: Memoranda changing or updating the Post Orders;

Section 5: ICE/ERO Standards and policies and Center practices relevant to the post; and

Section 6: Reviewed and signed form, or its equivalent, dated and with the staff member's name printed and signed.

**E. Living and Activity Area Post Orders**

In addition to the above requirements for all Post Orders, living and activity area Post Orders will follow the event schedule format (e.g., "0515—Lights on") and will direct the assigned staff member to maintain a unit log of pertinent information regarding resident activity.

The Shift Supervisor will visit each living and activity area and initial the log on each shift.

**F. Maintenance of Post Orders**

Post Orders will be kept current at all times. Post Orders will be formally reviewed annually, at a minimum, and updated as needed. Should staff members become aware that any part of a folder containing Post Orders is out of date, or in need of repair or replacement, they will notify the Shift Supervisor immediately.

Post Orders and logbooks are confidential and must be kept secure (under lock and key) at all times, and will never be left in an area accessible to residents.

The Security Manager will determine whether Post Orders require updates during any period between annual reviews. Any time the Security Manager determines a page is too difficult to read, it will be removed and replaced by a clean copy.

Two weeks before the annual review, supervisory staff will solicit written suggestions for changes or additions to Post Orders from ICE/ERO staff, contract staff, and other affected staff.

The Security Supervisor or equivalent will review and comment on all suggested changes prior to submitting them to the Security Manager for review and possible inclusion in Post Orders. All submissions will be retained in a historical file for two years.

The Security Manager will forward the updated Post Orders to the Center Administrator for approval.

Emergency changes may be made by memorandum, and immediately placed in the Post Orders with an immediate notification made to the employee union, when required. During each review, Post Orders must be revised to incorporate or delete emergency changes, at which time any emergency memoranda are to be removed.

**7.5 Post Orders**

A Post Orders master file will be maintained in the office of the Security Manager, and will be made available to all staff. Copies of the applicable Post Orders may be retained at the post, only if secure from resident access.

The Security Manager will ensure that all Post Orders are transcribed on a computer and that all back-up files are accounted for properly and maintained in a secure location.

**References**

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Interim Firearms Policy (2004)
- ICE Interim Use of Force Policy (2004)



# Exhibit I



# U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019

## Southwest Border Unaccompanied Alien Children (0-17 yr old) Apprehensions

Comparisons below reflect Fiscal Year 2019 compared to Fiscal Year 2018.

Unaccompanied Alien Children Apprehensions by Sector			
Sector	FY18	FY19	% Change FY18 to FY19
Big Bend	989	779	-21%
Del Rio	1,297	3,621	179%
El Centro	2,715	2,688	-1%
El Paso	5,461	16,159	196%
Laredo	2,879	2,521	-12%
Rio Grande	23,757	34,523	45%
San Diego	2,491	3,335	34%

Unaccompanied Alien Children Apprehensions by Sector			
Sector	FY18	FY19	% Change FY18 to FY19
Tucson	5,023	5,105	2%
Yuma	5,424	7,289	34%
<b>USBP Southwest Border Total</b>	<b>50,036</b>	<b>76,020</b>	<b>52%</b>

## Southwest Border Family Unit\* Apprehensions

Comparisons below reflect Fiscal Year 2019 compared to Fiscal Year 2018.

Family Unit* Apprehensions by Sector			
Sector	FY18	FY19	% Change FY18 to FY19
Big Bend	741	2,931	296%
Del Rio	2,829	32,835	1,061%
El Centro	3,539	7,873	122%
El Paso	12,312	132,909	980%
Laredo	597	1,169	96%

Family Unit* Apprehensions by Sector			
Rio Grande	63,278	211,631	234%
San Diego	4,408	16,174	267%
Tucson	4,954	16,199	227%
Yuma	14,554	51,961	257%
<b>USBP Southwest Border Total</b>	<b>107,212</b>	<b>473,682</b>	<b>342%</b>

**\*Note:** Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol.

## Southwest Border Single Adult Apprehensions

Comparisons below reflect Fiscal Year 2019 compared to Fiscal Year 2018.

Single Adult Apprehensions by Sector			
Sector	FY18	FY19	% Change FY18 to FY19
Big Bend	6,315	5,927	-6%
Del Rio	11,707	20,813	78%
El Centro	22,976	24,577	7%
El Paso	13,788	33,075	140%

**Single Adult Apprehensions by Sector**

Laredo	29,165	34,688	19%
Rio Grande	75,227	92,981	24%
San Diego	31,692	38,540	22%
Tucson	42,195	42,186	0%
Yuma	6,266	9,019	44%
<b>USBP Southwest Border Total</b>	<b>239,331</b>	<b>301,806</b>	<b>26%</b>

**Southwest Border Unaccompanied Alien Children Apprehensions by Country**

Numbers below reflect Fiscal Years 2014 - 2019.

**Unaccompanied Alien Children Apprehensions by Country**

<b>Country</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
El Salvador	16,404	9,389	17,512	9,143	4,949	<b>12,021</b>
Guatemala	17,057	13,589	18,913	14,827	22,327	<b>30,329</b>
Honduras	18,244	5,409	10,468	7,784	10,913	<b>20,398</b>
Mexico	15,634	11,012	11,926	8,877	10,136	<b>10,487</b>

## Southwest Border Family Unit\* Apprehensions by Country

Numbers below reflect Fiscal Years 2016 - 2019.

Family Units* Apprehensions by Country				
Country	FY16	FY17	FY18	FY19
El Salvador	27,114	24,122	13,669	<b>56,897</b>
Guatemala	23,067	24,657	50,401	<b>185,233</b>
Honduras	20,226	22,366	39,439	<b>188,416</b>
Mexico	3,481	2,271	2,261	<b>6,004</b>

**\*Note:** Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol.

## Southwest Border Single Adult Apprehensions by Country

Numbers below reflect Fiscal Years 2016 - 2019.

Single Adult Apprehensions by Country				
Country	FY16	FY17	FY18	FY19
El Salvador	27,222	16,495	12,751	20,893
Guatemala	32,621	26,387	42,994	48,606
Honduras	22,258	17,110	26,161	44,981

## Single Adult Apprehensions by Country

Country	FY16	FY17	FY18	FY19
Mexico	175,353	116,790	139,860	149,967

## Southwest Border Family Unit Subject, Unaccompanied Alien Children, and Single Adult Apprehensions Fiscal Year 2019 - By Month

FMUA: Family Unit Apprehensions

UAC: Unaccompanied Alien Children

SA: Single Adult

[Close all](#)
[Open all](#)

## FY19 Totals by Sector



Sector	FMUA	UAC	SA	TOTAL
	FY 2019	FY 2019	FY 2019	FY 2019
Big Bend	2,931	779	5,927	9,637
Del Rio	32,835	3,621	20,813	57,269
El Centro	7,873	2,688	24,577	35,138
El Paso	132,909	16,159	33,075	182,143
Laredo	1,169	2,521	34,688	38,378



Sector	FMUA	UAC	SA	TOTAL
	FY 2019	FY 2019	FY 2019	FY 2019
Rio Grande	211,631	34,523	92,981	339,135
San Diego	16,174	3,335	38,540	58,049
Tucson	16,199	5,105	42,186	63,490
Yuma	51,961	7,289	9,019	68,269
Southwest Border Total	473,682	76,020	301,806	851,508

## October



Sector	FMUA	UAC	SA	TOTAL
	FY 2019 OCT	FY 2019 OCT	FY 2019 OCT	FY 2019 OCT
Big Bend	17	37	501	555
Del Rio	548	145	1,309	2,002
El Centro	782	256	2,204	3,242
El Paso	5,180	830	1,324	7,334

Sector	FMUA	UAC	SA	TOTAL
	FY 2019 OCT	FY 2019 OCT	FY 2019 OCT	FY 2019 OCT
Laredo	121	266	3,061	3,448
Rio Grande	11,525	2,306	6,924	20,755
San Diego	1,156	227	2,844	4,227
Tucson	1,163	468	4,197	5,828
Yuma	2,624	429	561	3,614
Southwest Border Total	23,116	4,964	22,925	51,005

## November



Sector	FMUA	UAC	SA	TOTAL
Big Bend	31	36	381	448
Del Rio	831	146	1,111	2,088
El Centro	914	273	2,002	3,189
El Paso	6,435	1,038	1,394	8,867

Sector	FMUA	UAC	SA	TOTAL
Laredo	49	180	2,440	2,669
Rio Grande	11,487	2,309	6,917	20,713
San Diego	1,495	310	2,772	4,577
Tucson	754	465	3,843	5,062
Yuma	3,168	500	576	4,244
Southwest Border Total	25,164	5,257	21,436	51,857

## December



Sector	FMUA	UAC	SA	TOTAL
	FY 2019 DEC	FY 2019 DEC	FY 2019 DEC	FY 2019 DEC
Big Bend	122	74	425	621
Del Rio	919	155	950	2,024
El Centro	1,012	212	1,494	2,718
El Paso	7,336	970	1,144	9,450

Sector	FMUA	UAC	SA	TOTAL
	FY 2019 DEC	FY 2019 DEC	FY 2019 DEC	FY 2019 DEC
Laredo	74	148	1,837	2,059
Rio Grande	10,630	1,881	5,861	18,372
San Diego	2,413	355	3,048	5,816
Tucson	1,310	408	3,194	4,912
Yuma	3,691	550	538	4,779
Southwest Border Total	27,507	4,753	18,491	50,751

## January



Sector	FMUA	UAC	SA	TOTAL
	FY 2019 JAN	FY 2019 JAN	FY 2019 JAN	FY 2019 JAN
Big Bend	91	59	438	588
Del Rio	1,009	192	1,323	2,524
El Centro	808	236	1,417	2,461

Sector	FMUA	UAC	SA	TOTAL
	FY 2019 JAN	FY 2019 JAN	FY 2019 JAN	FY 2019 JAN
El Paso	6,837	1,012	1,288	9,137
Laredo	73	191	2,368	2,632
Rio Grande	9,942	2,182	5,589	17,713
San Diego	1,118	283	2,721	4,122
Tucson	670	357	3,069	4,096
Yuma	3,640	593	473	4,706
Southwest Border Total	24,188	5,105	18,686	47,979

## February



Sector	FMUA	UAC	SA	TOTAL
	FY 2019 FEB	FY 2019 FEB	FY 2019 FEB	FY 2019 FEB
Big Bend	186	61	598	845
Del Rio	2,262	239	1,512	4,013

Sector	FMUA	UAC	SA	TOTAL
	FY 2019 FEB	FY 2019 FEB	FY 2019 FEB	FY 2019 FEB
El Centro	1,189	336	1,794	3,319
El Paso	10,891	1,522	1,758	14,171
Laredo	61	249	2,813	3,123
Rio Grande	14,430	2,910	8,026	25,366
San Diego	2,036	383	3,029	5,448
Tucson	1,024	438	3,449	4,911
Yuma	4,451	679	557	5,687
Southwest Border Total	36,530	6,817	23,536	66,883

## March

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Sector	FMUA	UAC	SA	TOTAL
	FY 2019 MAR	FY 2019 MAR	FY 2019 MAR	FY 2019 MAR
Big Bend	197	80	665	942

Sector	FMUA	UAC	SA	TOTAL
	FY 2019 MAR	FY 2019 MAR	FY 2019 MAR	FY 2019 MAR
Del Rio	2,831	434	2,298	5,563
El Centro	1,139	299	2,123	3,561
El Paso	16,965	2,184	3,075	22,224
Laredo	106	301	3,785	4,192
Rio Grande	20,942	3,714	9,107	33,763
San Diego	2,504	428	3,949	6,881
Tucson	1,824	599	4,834	7,257
Yuma	6,696	917	837	8,450
Southwest Border Total	53,204	8,956	30,673	92,833

**April**

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Sector	FMUA	UAC	SA	TOTAL
	FY 2019 APR	FY 2019 APR	FY 2019 APR	FY 2019 APR
Big Bend	224	61	656	941
Del Rio	3,440	395	2,013	5,848
El Centro	742	255	2,389	3,386
El Paso	20,636	2,459	3,978	27,073
Laredo	103	258	3,614	3,975
Rio Grande	22,895	3,755	10,077	36,727
San Diego	2,106	367	3,724	6,197
Tucson	1,533	396	3,992	5,921
Yuma	7,034	934	1,237	9,205
Southwest Border Total	58,713	8,880	31,680	99,273

May

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Sector	FMUA	UAC	SA	TOTAL
	FY 2019 MAY	FY 2019 MAY	FY 2019 MAY	FY 2019 MAY
Big Bend	732	115	710	1,557
Del Rio	5,272	568	2,723	8,563
El Centro	576	242	2,664	3,482
El Paso	29,809	3,255	5,573	38,637
Laredo	110	265	3,740	4,115
Rio Grande	33,933	4,867	11,021	49,821
San Diego	1,366	307	4,209	5,882
Tucson	1,773	509	4,593	6,875
Yuma	10,915	1,347	1,662	13,924
Southwest Border Total	84,486	11,475	36,895	132,856

**June**

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Sector	FMUA	UAC	SA	TOTAL
	FY 2019 JUN	FY 2019 JUN	FY 2019 JUN	FY 2019 JUN
Big Bend	154	56	418	628
Del Rio	5,311	420	2,354	8,085
El Centro	303	174	2,408	2,885
El Paso	13,506	1,313	4,063	18,882
Laredo	83	196	3,540	3,819
Rio Grande	30,133	3,912	9,162	43,207
San Diego	803	200	3,681	4,684
Tucson	1,563	409	3,545	5,517
Yuma	5,502	692	1,001	7,195
Southwest Border Total	57,358	7,372	30,172	94,902

July

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Sector	FMUA	UAC	SA	TOTAL
	FY 2019 JUL	FY 2019 JUL	FY 2019 JUL	FY 2019 JUL
Big Bend	445	61	293	799
Del Rio	4,481	350	1,855	6,686
El Centro	156	107	1,951	2,214
El Paso	7,260	765	3,569	11,594
Laredo	137	140	2,409	2,686
Rio Grande	25,837	3,287	7,730	36,854
San Diego	519	154	2,785	3,458
Tucson	1,256	318	2,555	4,129
Yuma	2,452	372	734	3,558
Southwest Border Total	42,543	5,554	23,881	71,978

## August

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Sector	FMUA	UAC	SA	TOTAL
	FY 2019 AUG	FY 2019 AUG	FY 2019 AUG	FY 2019 AUG
Big Bend	464	81	377	922
Del Rio	3,285	268	1,744	5,297
El Centro	137	148	2,042	2,327
El Paso	4,527	457	3,094	8,078
Laredo	119	137	2,165	2,421
Rio Grande	13,533	1,971	6,851	22,355
San Diego	351	162	2,808	3,321
Tucson	1,394	317	2,369	4,080
Yuma	1,239	181	463	1,883
Southwest Border Total	25,049	3,722	21,913	50,684

## September

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Sector	FMUA	UAC	SA	TOTAL
	FY 2019 SEP	FY 2019 SEP	FY 2019 SEP	FY 2019 SEP
Big Bend	268	58	465	791
Del Rio	2,646	309	1,621	4,576
El Centro	115	150	2,089	2,354
El Paso	3,527	354	2,815	6,696
Laredo	133	190	2,916	3,239
Rio Grande	6,344	1,429	5,716	13,489
San Diego	307	159	2,970	3,436
Tucson	1,935	421	2,546	4,902
Yuma	549	95	380	1,024
Southwest Border Total	15,824	3,165	21,518	40,507

**Last Modified: Nov 03, 2023**





# Exhibit J

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al, Plaintiffs

v.

JANET RENO, Attorney General of the United States, et al., Defendants

Case No. CV 85-4544-RJK(Px)

STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

## **I DEFINITIONS**

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.
2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.
3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.
4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.
5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.
6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities.

## **II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION**

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall

initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of the Agreement attached hereto as Exhibit 2.

### **III CLASS DEFINITION**

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

### **IV STATEMENTS OF GENERAL APPLICABILITY**

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

### **V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST**

12. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 (i) within three (3) days, if the minor

was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this Paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

## **VI GENERAL POLICY FAVORING RELEASE**

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;**
- B. a legal guardian;**
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);**
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;**
- E. a licensed program willing to accept legal custody; or**
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.**

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;
- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any immigration proceedings pending against the minor.



In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this Paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian in writing seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

## **VII INS CUSTODY**

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or

the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);

ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

A. the minor is currently under a final order of deportation or exclusion;

B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770; (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services providers compiled pursuant to INS regulation (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

### **VIII TRANSPORTATION OF MINORS**

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause (B) minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

### **IX TRANSFER OF MINORS**

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

### **X MONITORING AND REPORTS**

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date

record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1) biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

**XI ATTORNEY-CLIENT VISITS**

32. A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minor in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

**XII FACILITY VISITS**

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

**XIII TRAINING**

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

#### **XIV DISMISSAL**

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

#### **XV RESERVATION OF RIGHTS**

36. Nothing in this agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

#### **XVI NOTICE AND DISPUTE RESOLUTION**

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that defendants have violated the terms of this Agreement shall be served on plaintiffs addressed to:

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

Carlos Holguín

Peter A. Schey

256 South Occidental Boulevard

Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere

James Morales

114 Sansome Street, Suite 905

San Francisco, CA 94104

and on Defendants addressed to:



Michael Johnson  
Assistant United States Attorney  
300 N. Los Angeles St., Rm. 7516  
Los Angeles, CA 90012

Allen Hausman  
Office of Immigration Litigation  
Civil Division  
U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044

#### **XVII PUBLICITY**

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

#### **XVIII ATTORNEYS FEES AND COSTS**

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of \$\_\_\_\_\_, in full settlement of all attorneys' fees and costs in this case.

#### **XIX TERMINATION**

40. All terms of this Agreement shall terminate the earlier of five years from the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with the Agreement, except the following: the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors.

#### **XX REPRESENTATIONS AND WARRANTY**

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on

behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

EXHIBIT 1  
Minimum Standards for Licensed Programs

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.
4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with

appropriate reading materials in languages other than English for use during the minor's leisure time.

5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.

9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

10. Whenever possible, access to religious services of the minor's choice.

11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.

12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

#### Exhibit 2

#### Instructions to Service Officers re: Processing, Treatment, and Placement of Minors

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

**(a) Minors.** A minor is a person under the age of eighteen years. However, individuals who have been "emancipated" by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

**(b) General policy.** The INS treats and shall continued to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

**(c) Processing.** The INS will expeditiously process minors and will provide them a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS's concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the minor cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

**(d) Release.** The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others. Minors shall be released in the following order of preference, to:

- (i) a parent;
- (ii) a legal guardian;
- (iii) an adult relative (brother, sister, aunt, uncle, or grandparent);
- (iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;
- (v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or
- (vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

**(e) Certification of custodian.** Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- (i) provide for the minor's physical, mental, and financial well-being;
- (ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;
- (iii) notify the INS of any change of address within five (5) days following a move;
- (iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;
- (v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

(vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

**(f) Suitability assessment.** An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

**(g) Family reunification.** Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue so long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

**(h) Placement in licensed programs.** A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential group, or foster care services for dependent children, including a program operating group homes, foster homes or facilities for special needs minors. Exhibit 1 of the Flores v. Reno Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

(i) the minor is an escape risk or delinquent, as defined in Paragraph (l) below;

(ii) a court decree or court-approved settlement requires otherwise;



(iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or

(iv) where the minor must be transported from remote areas for processing or speaks an unusual language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

**(i) Secure and supervised detention.** A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor -

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. ); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

"Chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

- (a) the minor is currently under a final order of deportation or exclusion;
- (b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;
- (c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility must be reviewed and approved by the regional Juvenile Coordinator.

**(j) Notice of right to bond redetermination and judicial review of placement.** A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case in which he either affirmatively requests, or fails to request or refuse, such a hearing on the Notice of Custody Determination. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review in the form attached, and (2) the list of free legal services providers compiled pursuant to 8 C.F.R. § 292a.

**(k) Transportation and transfer.** Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The Service may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

**(l) Periodic reporting.** All INS district offices and Border Patrol stations must report to the Juvenile Coordinator statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration status, and (f) hearing dates. The Juvenile Coordinator must also be informed of the reasons for placing a minor in a medium security facility or detention facility as described in paragraph (i).

**(m) Attorney-client visits by Plaintiffs' counsel.** The INS will permit lawyers for the *Reno v. Flores* plaintiff class to visit minors even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

**(n) Visits to licensed facilities.** In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement,, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

### EXHIBIT 3 Contingency Plan

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in licensed programs licensed by an appropriate state agency as expeditiously as possible. An emergency is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An influx is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the list. The Emergency Placement List will include the facility name; the number of beds at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.
2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, and (3) date placed in INS custody.
3. Within one business day of the emergency or influx the Juvenile Coordinator, or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their

availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year, the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

#### EXHIBIT 4 Agreement Concerning Facility Visits Under Paragraph 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

Exhibit 5

List of Organizations to Receive Information re: Settlement Agreement

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137



Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W. 4th Floor,  
Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

Exhibit 6  
Notice of Right to Judicial Review

"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."

# Exhibit 3

Publicly Filed

LODGED

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

Carlos Holguín

Peter A. Schey

Charles Song

256 South Occidental Boulevard

Los Angeles, CA 90057

Telephone: (213) 388-8693; Fax: (213) 386-9484

LATHAM & WATKINS

Steven Schulman

555 Eleventh St., NW, Suite 1000

Washington, DC 20004

Telephone: (202) 637-2184

*Of counsel:*

YOUTH LAW CENTER

Alice Bussiere

417 Montgomery Street, Suite 900

San Francisco, CA 94104

Telephone: (415) 543-3379 x 3903

*Attorneys for plaintiffs*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,

Plaintiffs,

-vs-

JANET RENO, Attorney General  
of the United States, et al.

Defendants

Case No. CV 85-4544-RJK(Px)

STIPULATION EXTENDING  
SETTLEMENT AGREEMENT AND FOR  
OTHER PURPOSES; AND ORDER  
THEREON

1  
2 IT IS HEREBY STIPULATED by and between the parties as follows:

3 1. Paragraph 40 of the Stipulation filed herein on January 17, 1997, is modified to read  
4 as follows:

5 "All terms of this Agreement shall terminate ~~the earlier of five years after the date of~~  
6 ~~final court approval of this Agreement or three years after the court determines that~~  
7 ~~the INS is in substantial compliance with this Agreement,~~ 45 days following defendants'  
8 publication of final regulations implementing this Agreement  
9 ~~except that~~ Notwithstanding the foregoing, the INS shall continue to house the general  
10 population of minors in INS custody in facilities that are state-licensed for the care of  
11 dependent minors."

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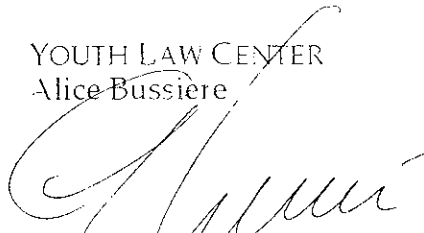
2 For a period of six months from the date this Stipulation is filed, plaintiffs shall not  
initiate legal proceedings to compel publication of final regulations implementing this  
Agreement. Plaintiffs agree to work with defendants cooperatively toward resolving  
disputes regarding compliance with the Settlement. The parties agree to confer regularly no  
less frequently than once monthly for the purpose of discussing the implementation of and  
compliance with the settlement agreement. However, nothing herein shall require plaintiffs  
to forebear legal action to compel compliance with this Agreement where plaintiff class  
members are suffering irreparable injury.

Dated: December 7, 2001.

CENTER FOR HUMAN RIGHTS &  
CONSTITUTIONAL LAW  
Carlos Holguín  
Peter A. Schey

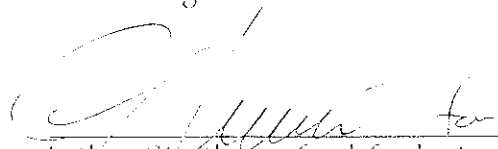
LATHAM & WATKINS  
Steven Schulman

YOUTH LAW CENTER  
Alice Bussiere

  
\_\_\_\_\_  
Carlos Holguín, for plaintiffs.

Dated: December 7, 2001

Arthur Strathern  
Office of the General Counsel  
U.S. Immigration & Naturalization Service

  
\_\_\_\_\_  
Arthur Strathern, for defendants  
Per fax authorization

IT IS SO ORDERED

Dated: December \_\_\_\_\_ 2001

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

2 For a period of six months from the date this Stipulation is filed, plaintiffs shall not initiate legal proceedings to compel publication of final regulations implementing this Agreement. Plaintiffs agree to work with defendants cooperatively toward resolving disputes regarding compliance with the Settlement. The parties agree to confer regularly no less frequently than once monthly for the purpose of discussing the implementation of and compliance with the settlement agreement. However, nothing herein shall require plaintiffs to forebear legal action to compel compliance with this Agreement where plaintiff class members are suffering irreparable injury.

Dated: December 7, 2001.

CENTER FOR HUMAN RIGHTS &  
CONSTITUTIONAL LAW  
Carlos Holguín  
Peter A. Schey

LATHAM & WATKINS  
Steven Schulman

YOUTH LAW CENTER  
Alice Bussiere

Carlos Holguin, for plaintiffs

Dated: December 7, 2001.

Arthur Strathern  
Office of the General Counsel  
U.S. Immigration & Naturalization Service

Arthur Strathern, *for defendants*  
Per fax authorization

IT IS SO ORDERED

Dated: December 7, 2001

UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE BY MAIL.

I, Carlos Holguin, declare and say as follows:

1 I am over the age of eighteen years and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 South Occidental Boulevard, Los Angeles, California 90057, in said county and state

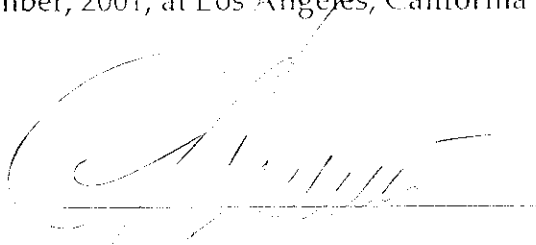
2 On December 7, 2001, I served the attached STIPULATION on defendants in this proceeding by placing a true copy thereof in a sealed envelope addressed to their attorneys of record as follows:

Arthur Strathern  
Office of the General Counsel  
U.S. Immigration & Naturalization Service  
425 I St. N.W.  
Washington, DC 20536

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct

Executed this 7th day of December, 2001, at Los Angeles, California



///