

medical housing unit or a medical housing unit does not exist, the detainee may, as a last resort, be temporarily placed in an administrative segregation cell in a Special Management Unit, provided space has been approved for this purpose by the medical staff and such space allows for constant and unobstructed observation. The facility administrator shall immediately notify ICE of such placement and indicate what level of monitoring the facility is providing. The facility administrator shall also work with ICE and the medical authority to identify alternative placements, including transfer of the detainee to a facility that can provide appropriate housing.

Suicidal detainees who are temporarily placed in a Special Management Unit shall have access to all programs and services, including recreation, visitation, telephones, counsel, and other services available to the general population, to the maximum extent possible. The facility shall ensure that the decision to place a suicidal detainee in an administrative segregation cell in Special Management Unit is not punitive in nature, and, as required by “A. Placement in Administrative Segregation” in Standard 2.12 “Special Management Units”, detainees in administrative segregation shall not be commingled with detainees in disciplinary segregation.

Detainees on suicide precautions who have not been placed in an isolated confinement setting by the qualified mental health professional will receive documented close observation at staggered intervals not to exceed 15 minutes (e.g. 5, 10, 7 minutes), checks at least every 8 hours by clinical staff, and daily mental health treatment by a qualified clinician.

### **1. No Excessive Deprivations**

Deprivations and restrictions placed on suicidal detainees must be kept at a minimum. Suicidal detainees 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 detainees in conditions of confinement that are worse than those experienced by the general population detainees can result in the detainee not discussing his or her suicidal intentions and falsely showing an appearance of a swift recovery.

### **2. Clothing, Hygiene, and Privacy**

The qualified mental health professional shall assess the detainee to determine whether a suicide smock is necessary. The facility may allow suicidal detainees under constant one-to-one monitoring to wear the standard issue clothing, minus any shoe laces, belts, or other accessories that could be used by a detainee to commit suicide or self-harm. Detainees should be provided suicide smocks to wear only when clinically indicated. Such special clothing must provide the detainee with sufficient warmth and modesty. A decision whether to provide underwear to detainees in suicide smocks shall be made by the clinical medical authority. Under no circumstance shall detainees be held without clothing.

Suicidal detainees shall 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 facility must have procedures in place that enable a detainee 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 security staff to observe the periods of time when a detainee 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 detainee conduct makes it impractical to provide same gender coverage during a period in which the inmate is undressed, the detainee should continue to be observed, and any such incident should be documented.

### **3. Transfer to an Outside Facility**

Any detainee 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 detainee.

### **4. Post-Discharge from Suicide Watch**

All detainees discharged from suicide observation should be re-assessed within 72 hours and then periodically at intervals prescribed by the treatment plan and consistent with the level of acuity by an appropriately trained and qualified medical staff member.

## **G. Communication**

### **1. Transfer of Detainee to ICE/ERO Custody**

Upon change of custody to ICE/ERO from federal, state or local custody, ICE/ERO staff or designee shall inquire into any known prior suicidal behaviors or actions, and, if behaviors or actions are identified, shall ensure detainee safety pending evaluation by a medical provider. The patient's "medical summary report" shall be transferred in accordance with standard "7.4 Detainee Transfers."

### **2. Continuity of Communication Regarding Detainees in ICE/ERO Custody**

Consistent communication shall be maintained between medical, mental health and correctional staff through a variety of mechanisms, in order to mitigate the risk for significant self-harm/suicide.

Such communication shall include the following:

- a. intake forms;
- b. daily briefings;
- c. shift change briefings;
- d. medical progress notes;
- e. special needs forms;
- f. medical/psychiatric alerts; and
- g. transfer summaries.

## **H. Intervention**

Following a suicide attempt, security staff shall initiate and continue appropriate life-saving measures until relieved by arriving medical personnel. Arriving medical personnel shall perform appropriate medical evaluation and intervention. The CMA or designee shall be notified when a detainee requires transfer to a local hospital or emergency room.

## **I. Notification and Reporting**

In the event of a suicide attempt, all appropriate ICE and ICE Health Service Corps (IHSC) officials shall be notified through the chain of command. The detainee's family, if known, and appropriate outside authorities shall also be immediately notified.

In the event that a detainee dies as a result of a suicide, the Notification and Reporting of Detainee Deaths Directive shall be followed.

In both cases, medical staff shall complete an Incident Report Form within 24 hours, and all staff who came into contact with the detainee before the suicide attempt or death shall submit a statement describing their knowledge of the detainee and the incident.

## **J. Review**

Every death that results from a suicide shall be subject to a mortality review process and the Notification and Reporting of Detainee Deaths



Directive shall be followed. ICE shall make arrangements to complete a psychological reconstruction of the suicide. The mortality review process shall include review of: circumstances surrounding the incident, facility procedures relevant to the incident, training of staff, medical/mental health reports, identification of possible precipitating factors, 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).

#### **K. Debriefing**

A critical incident debriefing following a suicide or serious suicide attempt shall be offered to all affected staff and detainees within 24 to 72 hours after the critical incident.

#### **L. Detainee Mental Health Follow-up**

Following a suicide or serious suicide attempt, the facility should offer appropriate mental health services to other detainees who may have been affected.

## 4.7 Terminal Illness, Advance Directives and Death

### I. Purpose and Scope

This detention standard ensures that each facility's continuum of health care services addresses terminal illness and advance directives, and provides specific guidance in the event of a detainee's death.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard "7.5 Definitions."

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in "V. Expected Practices").

1. The continuum of health care services provided to detainees shall address terminal illness and advance directives. Appropriate to the circumstances, each detainee shall be provided with an option to complete an advance medical directive;
2. *\*\*The facility shall be in compliance with*

*standards set by the National Commission on Correctional Health Care (NCCHC) in its provision of medical care to terminally ill detainees.*

3. In the event of a detainee's death, or a detainee becomes gravely ill, specified officials as listed herein and required by ICE policies and the detainee's designated next of kin shall be notified immediately;
4. In the event of a detainee's death, required notifications shall be made to authorities outside of ICE/ERO (e.g., the local coroner or medical examiner), and required procedures shall be followed regarding such matters as autopsies, death certificates, burials and the disposition of decedent's property. Established guidelines and applicable laws shall be observed in regard to notification of a detainee death while in custody;
5. The health services administrator (HSA) at the facility where the detainee was housed at the time of his/her death shall ensure the decedent's medical record is reviewed for completeness and closed out; and
6. In the event of a detainee death, all property of the detainee shall be returned within two weeks to the detainee's next of kin, unless property of the decedent is being held as part of an investigation into the circumstances of death;
7. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including

bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Terminal Illness, Advance Directives and Death” dated 12/2/2008.

### IV. References

National Commission on Correctional Health Care, *Standards for Health Care in Jails* (2014).

ICE/ERO *Performance-based National Detention Standards 2011*: “4.3 Medical Care.”

ICE Directive on “Notification and Reporting of Detainee Deaths,” Directive 7.9-0, October 1, 2009

### V. Expected Practices

#### A. Terminal Illness

When a detainee’s medical condition becomes life-threatening, the facility’s clinical medical authority (CMA), or HSA, shall:

1. Arrange the transfer of the detainee to an appropriate off-site medical or community facility if appropriate and medically necessary; and
2. Immediately notify the facility administrator and/or ICE/ERO Field Office Director both verbally and in writing of the detainee’s condition. The memorandum shall describe the detainee’s illness and prognosis.

The facility administrator, or designee, shall immediately notify ICE/ERO and IHSC.

A detainee 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 detainee (visitors, movement, authorization of care services, etc.). However, upon physical transfer of the patient to the community hospital’s care, the hospital assumes:

1. medical decision-making authority consistent with the contract (drug regimen, lab tests, x-rays, treatments, etc.); and
2. authority over the detainee’s treatment, which is exercised by the hospital’s medical staff once IHSC is notified of admission. However, IHSC managed care and the facility’s HSA shall 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 shall apply to detainees. The Field Office Director or designee shall immediately notify (or make reasonable efforts to notify) the detainee’s next-of-kin of the medical condition and status, the detainee’s location, and the visiting hours and rules at that location, in a language or manner which they can understand.

ICE/ERO, in conjunction with the medical provider, shall provide family members and any others as much opportunity for visitation as possible, in keeping with the safety, security and good order of the facility. Facility staff shall be reminded to observe and maintain safety and security measures while finding ways to respectfully accommodate the family and detainee needs at this sensitive time.

#### B. Living Wills and Advance Directives

Once a detainee is diagnosed as having a terminal illness or remaining life expectancy of less than one year, the medical staff shall offer the detainee access



to forms or other related materials on Advance Directives or Living Wills, including the appropriate translation services when needed. Likewise, when the detainee is held at an off-site facility, staff at that facility may assist the detainee in completing an Advance Directive and/or Living Will.

All facilities shall use the State Advance Directive form, appropriate to the state in which the facility is located, for implementing Living Wills and Advance Directives, the guidelines for which include instructions for detainees who wish to:

1. have a living will other than the generic form made available by medical staff; or
2. appoint another individual to make advance decisions for him/her.

At any time, a detainee may request forms or other related materials on Advance Directives or Living Wills. These may be prepared by the detainee's attorney at the detainee's expense.

When the terms of the Advance Directive must be implemented, the medical professional overseeing the detainee's care shall contact the appropriate ICE/ERO representative.

ICE/ERO may seek judicial or administrative review of a detainee's Advance Directive as appropriate.

### **C. Do Not Resuscitate (DNR) Orders**

Each facility holding detainees shall 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 facility is located.

Health care shall 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, appropriate resuscitative aid shall be rendered until the existence of an active, properly executed DNR is verified.

Each facility's DNR policy shall comply with the following stipulations:

1. a DNR written by a staff physician requires the CMA's approval;
2. the policy shall protect basic patient rights and otherwise comply with state requirements and jurisdiction in which the facility is located;
3. a decision to withhold resuscitative services shall be considered only under specified conditions:
  - a. the detainee is diagnosed as having a terminal illness;
  - b. the detainee has requested and signed the order (if the detainee is unconscious, incompetent, or otherwise unable to participate in the decision, staff shall attempt to obtain the written concurrence of an immediate family member, and the attending physician shall document these efforts in the medical record); and
  - c. 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; and
4. the detainee's medical file shall include documentation validating the DNR order:
  - a. a standard stipulation at the front of the in-patient record, and explicit directions: "do not resuscitate" or "DNR"; and
  - b. forms and memoranda recording:
    - 1) diagnosis and prognosis;
    - 2) express wishes of the detainee (e.g., living will, advance directive, or other signed document);
    - 3) immediate family's wishes, if immediate family has been identified;
    - 4) consensual decisions and recommendations of medical professionals, identified by name and title;
    - 5) mental competency (psychiatric) evaluation, if detainee concurred in, but did

- not initiate, the DNR decision; and
- 6) informed consent evidenced, among other things, by the legibility of the DNR order, signed by the ordering physician, and CMA; and
- 5. a detainee with a DNR order may receive all therapeutic efforts short of resuscitation;
- 6. the facility shall follow written procedures for notifying attending medical staff of the DNR order; and
- 7. as soon as practicable, the CD or HSA shall notify the IHSC medical director and the respective ICE Office of Chief Counsel of the basic circumstances of any detainee for whom a DNR order has been filed in the medical record.

#### **D. Organ Donation by Detainees**

If a detainee wants to donate an organ:

- 1. the organ recipient must be a member of the donor's immediate family;
- 2. the detainee may not donate blood or blood products;
- 3. all costs associated with the organ donation (e.g., hospitalization, fees) shall be at the expense of the detainee, involving no Government funds;
- 4. the detainee shall sign a statement that documents his/her:
  - a. decision to donate the organ to the specified family member;
  - b. understanding and acceptance of the risks associated with the operation;
  - c. that the decision was undertaken of his/her own free will and without coercion or duress; and
  - d. understanding that the Government shall not be held responsible for any resulting medical complications or financial obligations incurred;

- 5. IHSC medical staff shall assist in the preliminary medical evaluation, contingent on the availability of resources; and
- 6. the facility shall coordinate arrangements for the donation.

#### **E. Death of a Detainee in ICE/ERO Custody**

Each facility shall have written policy and procedures to be followed to notify ICE/ERO officials, next-of-kin and consulate officials of a detainee's death, in accordance with ICE Directive on Notification and Reporting of Detainee Deaths, Directive 7.9-0, October 1, 2009.

#### **F. Disposition of Property**

Facilities shall 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 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 shall have the opportunity to claim the remains. If the family chooses to claim the body, the family shall assume responsibility for making the necessary arrangements and paying all associated costs (e.g., transportation of body, burial).

If the family wishes to claim the remains, but cannot afford the transportation costs, 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, ICE/ERO shall notify the consulate, in writing, after which the consulate shall 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, ICE/ERO shall schedule an indigent's burial, consistent with local procedures. However, if the detainee's record indicates U.S. military service, before proceeding with the indigent burial arrangements, ICE/ERO shall contact the Department of Veterans Affairs to determine whether the decedent is eligible for burial benefits.

The Chaplain may advise the facility administrator and others involved about religious considerations that could influence the decision about the disposition of remains.

Under no circumstances shall ICE/ERO authorize cremation or donation of the remains for medical research.

## H. Death Certificate

The facility administrator shall specify policy and procedures regarding responsibility for proper distribution of the death certificate, as follows:

1. send the original to the person who claimed the body, with a certified copy in the A-file on the decedent; or
2. if the decedent received an indigent's burial, place the original death certificate in the A-file.

## I. Autopsies

Each facility shall have written policy and procedures to implement the provisions detailed below in this section.

1. the facility chaplain shall be involved in formulation of the facility's procedures;
2. because state laws vary greatly, including when to contact the coroner or medical examiner, the

respective ICE Office of Chief Counsel shall be consulted; and

3. a copy of the written procedures shall be forwarded to the ICE Office of Chief Counsel.

The written procedures shall address, at a minimum, the following:

1. contacting the local coroner or medical examiner, in accordance with established guidelines and applicable laws;
2. scheduling the autopsy;
3. identifying the person who shall perform the autopsy;
4. obtaining the official death certificate; and
5. transporting the body to the coroner or medical examiner's office.

### a. Who May Order an Autopsy

The 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 detainee'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.

### b. Making Arrangements for an Autopsy

Medical staff shall arrange for the approved autopsy to be performed by the local coroner or medical examiner, in accordance with established guidelines and applicable laws:



- 1) while a decision on an autopsy is pending, no action shall be taken that shall affect the validity of the autopsy results; and
- 2) local law may also require an autopsy for death occurring when the decedent was otherwise unattended by a physician.
- 3) Religious Considerations

It is critical that the Field Office Director, or designee, verify the detainee's religious preference prior to final authorizations for autopsies or embalming, and accommodate religious-specific requirements.

## 4.8 Disability Identification, Assessment, and Accommodation

### I. Purpose and Scope

This detention standard requires that facilities housing ICE/ERO detainees act affirmatively to prevent disability discrimination. It outlines the necessary processes to ensure that detainees with a disability will have an equal opportunity to participate in, access, and enjoy the benefits of the facility'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 facility that is physically accessible.

This detention standard applies to the following types of facilities housing ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard "7.5 Definitions."

## II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in "V. Expected Practices"). For purposes of this standard, reasonable accommodations, disability-related modifications, and auxiliary aids and services are collectively referred to as "accommodations" or "reasonable accommodations."

1. In addition to the requirements in this detention standard, the facility shall 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.
2. The facility will provide reasonable accommodations to provide detainees with disabilities an equal opportunity to access, participate in, or benefit from the facility's programs, services, and activities.
3. When considering what reasonable accommodations to provide, the facility will engage in an interactive and individualized process that considers the detainee's needs and gives primary consideration to the preferences of the detainee with a disability, as outlined in this standard.
4. The facility shall develop policies or procedures to allow for effective communication with detainees with disabilities – which may include the provision of auxiliary aids and services – during the interactive process as well as within the facility generally.
5. Each facility shall designate at least one staff member to serve as the facility'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 detainees with disabilities.

6. The facility orientation program and the detainee handbook shall notify and inform detainees about the facility's disability accommodations policy, including their right to request reasonable accommodations and how to make such a request.
7. Facility staff shall receive training on reasonable accommodations policies and procedures, to include the actions they must take upon identifying a detainee with a disability who may require an accommodation, modification, and/or auxiliary aid or service.
8. The facility shall provide detainees 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 facility programs and activities includes the effective communication of the applicable content and procedures in this standard.
9. The facility shall 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 detainee with a disability. Detainees with disabilities requiring an assistive device, such as a crutch or wheelchair, shall 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 detainee's disability or need for assistive devices or equipment may not provide the sole basis for the facility's decision to place the detainee apart from the general population.
10. Compliance with the reasonable accommodations policies and procedures articulated in this standard shall be consistently

documented where practicable, as stated in this standard.

11. The facility administrator shall convene a multidisciplinary team to assess the cases of detainees with communication and mobility impairments, detainees whose initial requests for accommodations have been denied, and complex cases. The multidisciplinary team will determine whether the detainee has a disability, whether the detainee requires an accommodation to access the facility'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 facility administrator or assistant facility administrator.
12. The local ICE/ERO Field Office shall be notified no later than 72 hours after the completed review and assessment of any detainee with a communication or mobility impairment. Facilities shall also notify the Field Office within 72 hours of any denial of a detainee's request for a disability-related accommodation.
13. Detainees shall be permitted to raise concerns about disability-related accommodations and/or the accommodations process through the grievance system, as outlined in standard 6.2 "Grievance System." Facilities shall ensure that detainees 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.

### III. Standards Affected

Not applicable.

### IV. References

ICE/ERO *Performance-Based National Detention*



*Standards 2011:*

- “1.3 Transportation (by Land)”;
- “2.1 Admission and Release”;
- “2.2 Custody Classification System”;
- “2.6 Hold Rooms in Detention Facilities”;
- “2.11 Sexual Abuse and Assault Prevention and Intervention”;
- “2.13 Staff-Detainee Communication”;
- “3.1 Disciplinary System”;
- “4.3 Medical Care”;
- “4.5 Personal Hygiene”;
- “5.2 Trips for Non-Medical Emergencies”;
- “5.4 Recreation”;
- “5.5 Religious Practices”;
- “5.6 Telephone Access”;
- “5.8 Voluntary Work Program”;
- “6.2 Grievance System”; and
- “7.3 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.

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).

ICE Policy No. 11065.1, “Review of the Use of Segregation for ICE Detainees” (Sept. 4, 2013).

## V. Expected Practices

### A. Definitions

#### 1. Disability

For purposes of these detention standards, the term “disability” means either of the below:

- a. a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
- b. a record of such a physical or mental impairment.

“Major life activities” are basic activities that a detainee without a disability in the general population can perform with little or no difficulty, including, but 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. 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.

#### 2. Communication Impairments

Detainees with “communication impairments” include detainees with physical, hearing, vision, and speech impairments (e.g., detainees who have hearing loss or are deaf; blind; have visual impairments; or nonverbal).

#### 3. Mobility Impairments

Detainees with “mobility impairments” include detainees with physical impairments who require a wheelchair, crutches, prosthesis, cane, or other mobility device, or other assistance.

#### 4. Programs, Services, or Activities

For purposes of these standards, the “programs,” “services,” “benefits,” and/or “activities” of a

detention facility include all aspects of the facility's operations that involve detainees. These include, but are not limited to, housing placements, medical care, safety and security protocols, food services, correspondence, visitation, grievance systems, transfers, and detainee 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 detainees 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 detainees with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

## 6. Reasonable Accommodations

For purposes of these standards, "reasonable accommodation" means any change or adjustment in detention facility operations, any modification to detention facility policy, practice, or procedure, or any provision of an aid or service that permits a detainee with a disability to participate in the facility's programs, services, activities, or requirements, or to enjoy the benefits and privileges of detention programs equal to those enjoyed by detainees 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 facility shall 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."

## B. Written Policy and Procedures, and Compliance Manager

### 1. Reasonable Accommodation Policy

The facility shall develop written policy and procedures, including reasonable timelines, for reviewing detainees' requests for accommodations related to a disability and for providing accommodations (including interim accommodations), modifications, and reassessments. These policies and procedures shall be consistent with the processes outlined in this standard.

### 2. Disability Compliance Manager

The facility shall designate a Disability Compliance Manager to assist facility personnel in ensuring compliance with this standard and all applicable federal, state, and local laws related to accommodation of detainees 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 detainee may identify him- or herself as having a disability and/or request a reasonable accommodation at any point during detention. Detainees may submit a formal or informal (i.e., verbal or written) request for accommodations or

assistance. 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 facility shall also consider information submitted by a third party, such as an attorney, family member, or other detainee identifying a detainee with a disability or a detainee’s need for an accommodation.

Further, it is incumbent upon facility staff to identify detainees with impairments that are open, obvious, and apparent. Identification of detainees 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 detainee’s mobility or ability to communicate. Upon identifying a detainee with a potential disability, the facility shall review the need for any necessary accommodations pursuant to Section F below.

The processes described in this standard apply to any detainee 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 facility shall comply with all applicable federal, state, and local laws and regulations related to the accessibility of safe and appropriate housing for detainees with disabilities.

The facility will ensure that detainees with disabilities are able to physically access its programs, services, and activities. This includes, for example, ensuring detainees with disabilities can access telephones, as well as toileting and bathing facilities.

### **2. Most Integrated Setting**

Every detainee with a disability will be housed in a space that affords him or her safe, appropriate living

conditions. Detainees with disabilities should be provided access to the facility’s programs and services in the least restrictive setting possible and the most integrated setting appropriate to the needs of the detainee with a disability.

Detainees with disabilities shall generally be permitted to keep assistive devices (including such aids as canes and crutches) with them at all times, including in general population. Placement apart from the general population 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, whether the detainee is placed in an SMU, medical clinic, or elsewhere. The justification shall 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 detainee’s disability or need for accommodations may not provide the sole basis for a decision to place the detainee in an SMU. An individualized assessment must be made in each case, and the justification for the placement documented.

## **E. Effective Communication**

Throughout the facility’s programs and activities, including at all stages of the reasonable accommodation process, the facility must take appropriate steps to allow for effective communication with detainees with disabilities to afford them an equal opportunity to participate in, and enjoy the benefits of, the facility’s programs and activities. Steps to ensure effective communication may include the provision and use of auxiliary aids or services for detainees 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 detainee, 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 facility shall give primary consideration to the request of the detainee with a disability.

Use of other detainees to interpret or facilitate communication with a detainee with a disability may only occur in emergencies.

## **F. Reasonable Accommodations Process**

The facility's process to appropriately accommodate a detainee with a disability will differ depending on the nature of the impairment or disability being addressed. However, in certain cases, the facility administrator or his or her designee shall automatically convene a multidisciplinary team, as described in section 4 below.

### **1. Immediate Accommodations**

The facility shall provide detainees with disabilities with necessary accommodations in an expeditious manner. In many situations, the facility will be able to immediately grant a detainee's request for an accommodation. Where a request for accommodation is immediately granted and provided, and the accommodation fully addresses the detainee's ability to access the facility's programs and activities, the facility's response will not ordinarily involve referral to a multidisciplinary team.

### **2. Medical and Mental Health Treatment**

Many detainees with disabilities will receive medical and/or mental health treatment from the facility's clinical medical authority. Where a detainee with a disability is fully able to access the facility'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 facility shall consider whether there are any interim accommodations that would

afford the detainee 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 shall provide to the detainee any such interim accommodations it identifies.

### **3. Detainees with Cognitive, Intellectual, or Developmental Disabilities**

Referral to the multidisciplinary team may be appropriate for detainees who are identified as having a cognitive, intellectual, or developmental disability, including a traumatic brain injury. Such detainees may face difficulties navigating the detention environment, including disciplinary, grievance, and other processes. Additionally, such detainees may not understand the process for requesting an accommodation or be aware of limitations on their access to facility programs. Facility staff should not require the detainee's participation in the assessment process, and should be sensitive to the fact that some detainees in this category may not perceive themselves as having a disability. However, facility staff should provide appropriate assistance to a detainee with a cognitive, intellectual, or developmental disability, even if not explicitly requested (for example, reading and explaining a form to a detainee with limited cognitive abilities). Pursuant to Standard 4.3 "Medical Care," the facility is also required to report the identification of detainees with certain cognitive, intellectual, or developmental disabilities to the ICE/ERO Field Office.

### **4. Multidisciplinary Team**

Requests or referrals that require an evaluation by a multidisciplinary team include (1) detainees with mobility impairments; (2) detainees with communication impairments; (3) detainees whose initial requests for accommodations or assistance have been denied; (4) detainees who have filed

grievances about the accommodation of their disabilities or impairments; (5) detainees whose requests are complex or best addressed by staff from more than one discipline (e.g., security, programming, medical, or mental health, etc.); and (6) detainees whose cases are otherwise determined by facility staff to be appropriate for referral to the team.

The multidisciplinary team will include a healthcare professional and any additional facility 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 detainee or request for accommodations under review. When appropriate, the multidisciplinary team shall consult with ICE/ERO to obtain guidance, information, and/or resources for providing accommodations.

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 detainees are subject to applicable privacy limitations and protections and must be conducted in a manner consistent with the Privacy Act.

**a. Interaction with the Detainee**

Given the importance of considering information from the detainee, the multidisciplinary team shall make a good faith attempt to interview the detainee and determine the nature of the detainee's disability, any difficulties the detainee experiences in accessing the facility or its programs or services, and the detainee's specific requests or needs for accommodation, if any. The multidisciplinary team will respect any detainee's decision to decline to participate in the accommodation process, including the invitation

to interview with the multidisciplinary team. If a detainee declines such an invitation, the multidisciplinary team will document this declination.

**b. Multidisciplinary Team Determinations**

The multidisciplinary team will determine whether the detainee has a disability, whether the detainee requires an accommodation to meaningfully access the facility'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 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 detainee with an approved accommodation, the multidisciplinary team shall consider whether there are any interim accommodations that would afford the detainee access to its programs and activities pending the final disposition of the request or the provision of approved accommodations. The facility shall provide to the detainee 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 detainee of the decision and the status of the request with ICE and shall consider whether to provide an interim accommodation. The facility shall provide to the detainee 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 facility determination, and the team will follow the notification procedures outlined below and implement the approved accommodations as quickly as possible.

c. Final Review of Any Denial by Facility Administrator or Assistant Facility Administrator

Any denial by the multidisciplinary team of a request for accommodation related to a disability must be approved by the facility administrator or assistant facility 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 accommodation(s) should be provided. The facility administrator shall complete his or her review of the multidisciplinary team's decision within 3 working days of the team decision.

d. Detainee Notification

The facility will provide the detainee 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 facility administrator or assistant facility administrator, and will include a justification for the denial. Notification shall be provided in a language or manner the detainee can understand.

e. Staff Notification

Where an accommodation is granted, facility policy or procedures will ensure that all relevant facility staff, including facility security 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.

f. 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 shall include a good faith attempt to interview the detainee regarding the current accommodations provided and the need, if any, for changes to the detainee's accommodation plan.

Subsequent periodic reassessments of approved accommodations shall take place at a minimum every 90 days thereafter, unless requested sooner by the detainee. 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 shall be documented in the detainee's medical and/or facility file.

g. Documentation

After the facility has completed its review of a detainee with a disability or of a request for an accommodation, facility staff shall place written documentation of the following in the detainee's medical and/or detention file, as appropriate:

- 1) date of the initial assessment interview with the detainee with a potential disability, along with the name(s) and title(s) of any/all facility staff in attendance;
- 2) summary of the detainee's request, if any, including any specific accommodations requested, and any information or



observations related to the detainee's disability;

- 3) finding on whether the detainee has a disability and how the disability or impairment limits the detainee's ability to access programs or activities within the detention setting;
- 4) the facility's final decision on any requested accommodations;
- 5) provision of any aids or services to the detainee, including the specific type(s) of accommodation provided and/or steps taken by the facility, and the implementation date(s);
- 6) a copy of any written notification provided to the detainee, including the justification in the case of a denial; and
- 7) the 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 facility to deny an accommodation to a detainee who has been determined to have a disability include: (1) the detainee is not denied access to the facility's programs or activities because of a disability; (2) there is not a nexus between the disability and the requested accommodation; (3) the requested accommodation would fundamentally alter the nature of the program, service, or activity; (4) the requested accommodation would result in an undue financial and administrative burden; or (5) the detainee poses a direct threat to staff or other detainees.

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 facility 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, detainees 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 facility'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 facility and each detainee with a disability.

### 2. Undue Financial and Administrative Burden

An "undue financial and administrative burden" is a significant difficulty or expense related to a facility's operations, programs, or activities. In evaluating whether a particular accommodation would result in an undue burden, the facility must consider all resources available for use in the funding and operation of the conducted program or activity *as a whole*.

### 3. Direct Threat

The facility may justify the denial of an accommodation to a detainee with a disability on the basis of the detainee posing a direct threat to staff or other detainees only if providing the accommodation would unavoidably exacerbate the threat. The determination that a detainee with a disability poses such a direct threat to staff or other detainees 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. Detainees 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 Detainee with a Communication or Mobility Impairment

The facility shall notify the Field Office Director as soon as practicable, but no later than 72 hours, after the multidisciplinary team has completed its review of the needs of any detainee with a communication or mobility impairment. This notification must include, at a minimum,

- a. the nature of the detainee's disability or impairment;
- b. the accommodation requested by the detainee; and
- c. the facility's plan to accommodate the detainee.

### 2. Notification of Facility Denials and Provision of Alternative Accommodations

The facility shall notify the Field Office Director in writing within 72 hours of any final denial by the facility administrator or assistant facility administrator of any accommodations request reviewed by the multidisciplinary team. This notification must include, at a minimum,

- a. the nature of the detainee's disability;
- b. the accommodation requested by the detainee;
- c. the reason for denial; and
- d. any steps the facility has taken to address the detainee's needs.

ICE may review the facility's denial of a request for an accommodation. The facility shall provide additional information as needed to further ICE's

review, and shall cooperate with ICE on any additional steps that may be necessary.

## I. Staff Training

Training on the facility's Disability and Reasonable Accommodations procedures shall be provided to employees, volunteers, and contract personnel, and shall also be included in annual refresher training thereafter. New facility staff, including contractors and volunteers, shall receive this training as part of the Initial Orientation training required by Standard 7.3. The level and type of training for volunteers and contractors will be based on the services they provide and their level of contact with detainees; however, all volunteers and contractors who have any contact with detainees must be notified of the facility'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. Detainee Orientation

The facility orientation program required by standard 2.1, "Admission and Release," and the detainee handbook required by standard 6.1, "Detainee Handbook," shall notify and inform detainees about the facility's disability accommodations policy, including their right to request reasonable accommodations and how to make such a request. The facility will post other documents for detainee awareness in detainee living areas and in the medical unit, as requested by the local ICE/ERO Field Office.

## 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 facilities 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 facility is required to provide reasonable modifications to provide individuals with disabilities with an equal opportunity to access, participate in, or benefit from the facility's programs, services, and activities. When considering what reasonable modifications to provide, the facility 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>

### 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 detainees 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 detainee 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, 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 detention 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 facilities. 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

### I. Purpose and Scope

This detention standard ensures that detainees shall be able to correspond with their families, the community, legal representatives, government offices and consular officials consistent with the safe and orderly operation of the facility.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Detainees shall be able to correspond with their families, the community, legal representatives, government offices and consular officials.
2. Detainees shall be notified of the facility’s rules on correspondence and other mail through the detainee handbook, or supplement, provided to

each detainee upon admittance.

3. The amount and content of correspondence detainees send at their own expense shall not be limited, except to protect public safety or facility security and order.
4. Indigent detainees shall receive a specified postage allowance to maintain community ties and necessary postage for privileged correspondence.
5. Detainees shall have access to general interest publications.
6. Incoming and outgoing mail, with the exception of special correspondence or legal mail, shall be opened to inspect for contraband and to intercept cash, checks and money orders.
7. General correspondence shall be read or rejected only to protect the safe, secure and orderly operation of the facility, and detainees shall be notified in writing when correspondence is withheld in part or in full.
8. Detainees shall be permitted to send special correspondence or legal mail to a specified class of persons and organizations, and incoming mail from these persons shall be opened only in the presence of the detainees (unless waived) to check for contraband (except when contamination is suspected).
9. Incoming and outgoing letters shall be held for no more than 24 hours and packages no more than 48 hours before distribution, excluding weekends, holidays or exceptional circumstances.
10. Detainees in Special Management Units (SMU) shall have the same correspondence privileges as detainees in the general population.
11. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the



provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Correspondence and Other Mail” dated 12/2/2008.

### VI. References

American Correctional Association 4th Edition, *Standards for Adult Detention Facilities*: 4-ALDF-5B-05, 5B-06, 5B-07, 5B-08, 5B-09, 5B-10, 2A-27, 2A-60, 6A-09.

### V. Expected Practices

#### A. General

Each facility shall have written policy and procedures concerning detainee correspondence and other mail.

The quantity of correspondence a detainee may receive or send at his/her own expense shall not be limited. Facilities shall not limit detainees to postcards and shall allow envelope mailings. For reasons of safety, security and the orderly operation

of the facility, non-correspondence mail, such as packages and publications, shall be subject to certain restrictions.

#### B. Indigent Detainees

Ordinarily, a detainee is considered “indigent” if he/she has less than \$15.00 in his/her account. Facilities shall make a timely determination as to whether a detainee is indigent.

Each facility shall have written procedures that explain how indigent detainees can request postage at government expense. Such procedures shall also be posted in a common area where all detainees can view them.

At government expense, as determined by ICE/ERO, indigent detainees shall be permitted to post a reasonable amount of mail each calendar week (see “J. Postage Costs”) below, including the following:

1. an unlimited amount of special correspondence or legal mail, within reason;
2. three pieces of general correspondence; and/or
3. packages as deemed necessary by ICE/ERO.

#### C. Detainee Notification

The facility shall notify detainees of its rules on correspondence and other mail through the detainee handbook, or supplement, provided to each detainee upon admittance. At a minimum, the notification shall specify:

1. That a detainee may receive mail, the mailing address of the facility, and instructions on how envelopes shall be addressed;
2. That a detainee may send mail, the procedure for sending mail, and instructions on how outgoing mail must be addressed;
3. That general correspondence and other mail addressed to detainees shall be opened and inspected in the detainee’s presence, unless the facility administrator authorizes inspection without the detainee’s presence for security

reasons;

4. 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; the notification shall clearly state that it is the detainee’s responsibility to inform senders of the labeling requirement;
5. That incoming special correspondence or legal mail may only be opened in the detainee’s presence, and may be inspected for contraband, but not read, and that outgoing special correspondence or legal mail shall not be opened, inspected or read;
6. That packages may neither be sent nor received without advance arrangements approved by the facility administrator, as well as information regarding how to obtain such approval;
7. A description of mail which may be rejected by the facility and which the detainee shall not be permitted to keep in his/her possession;
8. That identity documents, such as passports, birth certificates, etc., in a detainee’s possession are contraband and may be used by ICE/ERO as evidence against the detainee or for other purposes authorized by law (however, upon request, the detainee shall be provided a copy of each document, certified by an ICE/ERO officer to be a true and correct copy; the facility shall consult ICE/ERO with any and all requests for identity documents);
9. The procedure to obtain writing implements, paper and envelopes; and
10. The procedure for purchasing postage (if any), and the rules for providing indigent and certain other detainees free postage.

The rules notification shall be posted in each housing area.

The facility shall provide key information to

detainees in languages spoken by any significant portion of the facility’s detainee population. Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

## **D. Processing**

Detainee correspondence and other mail shall be delivered to the detainee and to the postal service on regular schedules.

1. Incoming correspondence shall be distributed to detainees within 24 hours (one business day) of receipt by the facility.
2. Outgoing correspondence shall be delivered to the postal service no later than the day after it is received by facility staff or placed by the detainee in a designated mail depository, excluding weekends and holidays.
3. 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 shall be distributed to detainees on the day received by the facility. Incoming priority, overnight, certified mail and deliveries from a private package delivery service, etc., shall be recorded with detainee signatures in a logbook maintained by the facility.

## **E. Packages**

Each facility shall implement policies and procedures concerning detainee packages.

*Detainees shall not be allowed to receive or send packages without advance arrangements approved by the facility administrator. The detainee shall pay postage for packages and oversized or overweight mail.*

## **F. Inspection of Incoming Correspondence and Other Mail**

### **1. General Correspondence and Other Mail**

All facilities shall implement procedures for the inspection of all incoming general correspondence and other mail (including packages and publications) for contraband.

Staff shall open and inspect incoming general correspondence and other mail (including packages and publications) in the presence of the detainee unless otherwise authorized by the facility administrator. Incoming general correspondence may be read to the extent necessary to maintain security, as authorized by the facility administrator.

Inspection is generally for the purpose of detecting contraband. Reading of mail, which requires approval of the facility administrator, may be conducted at random. Mail may also be read when a specific security concern arises with respect to an individual detainee, including, but not limited to, for obtaining information such as escape plots, plans to commit illegal acts and plans to violate institution rules.

### **2. Special Correspondence or Legal Mail**

“Special correspondence” or “legal mail” shall be defined as the term for detainees’ written communications to or from any of the following:

- a. private attorneys and other legal representatives;
- b. government attorneys;
- c. judges and courts;
- d. embassies and consulates;
- e. the president and vice president of the United States;
- f. members of Congress;
- g. the Department of Justice (including the DOJ Office of the Inspector General);
- h. the Department of Homeland Security (including

U.S. Immigration and Customs Enforcement, ICE Health Services Corps, the Office of Enforcement and Removal Operations, the DHS Office for Civil Rights and Civil Liberties, and the DHS Office of the Inspector General);

- i. outside health care professionals;
- j. administrators of grievance systems; and
- k. representatives of the news media.

Correspondence shall only be treated as special correspondence or legal mail if the title and office of the sender (for incoming correspondence) or addressee (for outgoing correspondence) are unambiguously identified on the envelope, and the envelope is labeled “special correspondence” or “legal mail.”

All facilities shall implement procedures for inspecting for contraband, in the presence of the detainee, all special correspondence or legal mail. Detainees shall 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 shall neither read nor copy special correspondence or legal mail. The inspection shall 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:

- a. the addressee is another detainee; or
- b. there is evidence the item might present a threat to the facility’s secure or orderly operation, endanger the recipient or the public or facilitate criminal activity.

The detainee must be present when the



correspondence or other mail, including packages, is inspected, unless otherwise authorized by the facility administrator.

## **2. Special Correspondence or Legal Mail**

Staff shall neither read nor copy outgoing special correspondence or legal mail. The inspection shall be limited to the purposes of detecting physical contraband and confirming that any enclosures qualify as special correspondence or legal mail.

Staff shall treat outgoing correspondence as special correspondence or legal mail only if the name, title and office of the recipient are clearly identified on the envelope and the envelope is labeled “special correspondence” or “legal mail.”

## **H. Rejection of Incoming and Outgoing Mail**

All facilities shall implement policies and procedures addressing acceptable and non-acceptable mail. Detainees may receive as correspondence any material reasonably necessary for the detainee to present his/her legal claim, in accordance with this standard.

Incoming and outgoing general correspondence and other mail may be rejected to protect the security, good order or discipline of the institution; to protect the public; or to deter criminal activity.

When incoming or outgoing mail is confiscated or withheld (in whole or in part), the detainee shall be notified and given a receipt.

The facility administrator shall ordinarily 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.

1. 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 detainee’s country of origin may be relevant to a detainee’s legal case and should not automatically be considered contraband;

2. Information regarding escape plots, or plans to commit illegal activities, or to violate ICE/ERO rules or facility guidelines;
3. Information regarding the production of drugs or alcohol;
4. Sexually explicit material that is obscene or prurient in nature;
5. Threats, extortion, obscenity or gratuitous profanity;
6. Cryptographic or other surreptitious code that may be used as a form of communication; or
7. Other contraband (any package received without the facility administrator’s prior authorization is considered contraband).

Both sender and addressee shall be provided written notice, signed by the facility administrator, with explanation, when the facility rejects incoming or outgoing mail. Rejected mail shall be considered contraband and handled as detailed in the next section of this standard.

A detainee may appeal rejection of correspondence through the Detainee Grievance System.

## **I. Contraband Recording and Handling**

When an officer finds an item that must be removed from a detainee’s mail, he/she shall make a written record that includes:

1. the detainee’s name and A-number;
2. the name of the sender and recipient;
3. a description of the mail in question;
4. a description of the action taken and the reason for it;

5. the disposition of the item and the date of disposition; and
6. the officer's signature.

Prohibited items discovered in the mail shall be handled as follows:

1. A receipt shall be issued to the detainee for all cash, which shall be safeguarded and credited to the detainee's account in accordance with standard "2.5 Funds and Personal Property."
2. Identity documents (e.g., passports, birth certificates) shall be placed in the detainee's A-file and, upon request, the detainee shall be provided with a copy of the document, certified by an ICE/ERO officer to be a true and correct copy.
3. Other prohibited items found in the mail shall be handled in accordance with standard "2.3 Contraband"; however, at the discretion of the facility administrator, soft contraband may be returned to the sender.
4. The facility administrator shall ensure that facility records of the discovery and disposition of contraband are accurate and current.

## **J. Postage Costs**

1. The facility shall not limit the amount of correspondence detainees may send at their own expense, except to protect public safety or facility security and order.
2. The facility shall provide a postage allowance at government expense under two circumstances:
  - a. to indigent detainees only; or
  - b. to all detainees, if the facility does not have a system for detainees to purchase stamps.
3. Free postage is generally limited to letters weighing one ounce or less, with exceptions allowed for special correspondence; however, in compelling circumstances, the facility may also provide free postage for general correspondence and other mail.

4. Detainees who qualify for a postage allowance as defined above shall be permitted to mail, at government expense, the following:

- a. a reasonable amount of mail each week, including at least three pieces of general correspondence;
- b. an unlimited amount of correspondence related to a legal matter, within reason, including correspondence to a legal representative, free legal service provider, any court, opposing counsel or to a consulate, potential legal representative and any court, as determined by the facility administrator; and
- c. packages containing personal property, when the facility administrator determines that storage space is limited and that mailing the property is in the government's best interest. See standard "2.5 Funds and Personal Property" for detailed information.

## **K. Writing Implements, Paper and Envelopes**

The facility shall provide writing paper, writing implements and standard sized envelopes at no cost to detainees. Special sized envelopes may be provided to detainees at their cost.

## **L. Detainees in Special Management Units (SMU)**

All facilities shall have written policy and procedures regarding mail privileges for detainees housed in an SMU.

Detainees in administrative or disciplinary segregation shall have the same correspondence privileges as detainees in the general population.

## **M. Correspondence with Representative of the News Media**

A detainee may use special correspondence to communicate with representatives of news media.

A detainee may not receive compensation or anything of value for correspondence with news media, including, but not limited to, publishing under a byline. A detainee may not act as a reporter.

Representatives of news media may initiate correspondence with a detainee; however, such correspondence shall be treated as special correspondence only if the envelope is properly addressed with the name, title and office of the media representative and is clearly labeled “special correspondence.”

#### **N. Notaries, Certified Mail and Miscellaneous Needs Associated With Legal Matters**

If a detainee without legal representation requests

certain services in connection with a legal matter, such as notary public or certified mail, and has no family member, friend or community organization to provide assistance, the facility shall consult with ICE/ERO to provide the necessary services and shall assist the detainee in a timely manner.

If it is unclear whether the requested service is necessary in pursuit of a legal matter, the respective ICE Office of Chief Counsel shall be consulted.

#### **O. Facsimile Communication**

When timely communication through the mail is not possible, the facility administrator may in his/her discretion allow for a reasonable amount of communication by means of facsimile device between the detainee and his/her designated legal representatives.



## 5.2 Trips for Non-medical Emergencies

### I. Purpose and Scope

This detention standard permits detainees to maintain ties with their families through emergency staff-escorted trips into the community to visit critically ill members of the immediate family or to attend their funerals.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Within the constraints of safety and security, selected detainees shall be able to visit critically ill members of the immediate family, attend their funerals or attend family-related state court proceedings, while under constant staff supervision.
2. Safety and security shall be primary

considerations in planning, approving and escorting a detainee out of a facility for a non-medical emergency.

### III. Standards Affected

This detention standard replaces “Escorted Trips for Non-medical Emergencies” dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-1B-06.

ICE/ERO *Performance-based National Detention Standards 2011*:

- “1.3 Transportation (by Land)”;
- “2.10 Searches of Detainees”; and
- “2.15 Use of Force and Restraints.”

ICE Interim Use of Force Policy (7/7/2004), as amended or updated.

### V. 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, the facility administrator may allow a detainee, under ICE/ERO staff escort, to visit a critically ill member of his/her immediate family, attend an immediate family member’s funeral and/or wake or attend a family-related state court proceeding.

“Immediate family member” refers to a parent (including stepparent or foster parent), brother, sister, biological or adopted child and spouse (including common-law spouse).

The Field Office Director is the approving official for non-medical emergency escorted trips from SPCs, CDFs and IGSAs, and may delegate this authority to the Assistant Field Office Director-level for any

detainee who does not require a high degree of control and supervision.

The facility administrator shall designate staff to help detainees prepare requests for non-medical emergency trip requests, according to the following stipulations.

1. That staff member shall forward the completed request to the detainee's deportation officer.
2. The deportation officer shall review the merits of the request, to include consultations with immigration enforcement agents, medical staff, the detainee's family and other persons in positions to provide relevant information.
3. On the basis of the information collected, the deportation officer shall report to the facility administrator on the appropriateness of the detainee'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 facility. ICE/ERO assumes the costs, except that the detainee must pay for his/her own commercial carrier transportation (e.g., plane, train), if needed for the trip.

### **2. Extended Trip**

An "extended" trip involves more than a 10-hour absence and may include an overnight stay. The cost of the detainee's roundtrip transportation on a commercial carrier must be prepaid by the detainee, the detainee's family or another source approved by the Field Office Director.

### **3. Travel Arrangements**

ICE/ERO shall make all travel arrangements; however, travel involving a commercial carrier may not commence until the detainee or person acting on his/her behalf has submitted an open paid-in-full ticket or electronic-ticket voucher in the detainee's

name.

As needed, ICE/ERO shall provide overnight housing in an SPC, CDF or IGSA facility.

ICE/ERO shall pay the travel costs incurred by the transporting officers.

## **C. Selection of Escorts**

No less than two escorts are required for each trip. The Field Office Director or his/her designee shall select and assign the roles of the transporting officers (escorts) and delegate to one the decision-making authority for the trip. Ordinarily, probationary officers may not be assigned, and in no case may more than one probationary officer be on an escort team.

## **D. Supervision and Restraint Requirements**

Except when the detainee is housed in a detention facility, transporting officers shall maintain constant and immediate visual supervision of any detainee who is under escort and shall follow the policy and procedures in the standards on "Transportation (By Land)" and "Use of Force and Restraints."

## **E. Training**

Escort officers and others, as appropriate, shall receive training on:

1. standard "5.2 Trips for Non-medical Emergencies"; and
2. standards "1.3 Transportation (By Land)" and "2.15 Use of Force and Restraints."

## **F. Escort Instructions**

1. Escorts shall follow the applicable policies, standards and procedures listed above in this standard.
2. Routes, meals and lodgings (if necessary) shall be arranged prior to departure.
3. Escorts shall follow the schedule included in the

trip authorization, arriving at and departing from the place(s) and event(s) listed at the specified times.

4. For security reasons, the trip route and schedule shall be confidential.
5. The responsible transporting officer shall report unexpected developments to the Control Center at the originating facility. Control Center staff shall relay the information to the highest-ranking supervisor on duty, who shall issue instructions for completion of the trip.
6. Escorts shall deny the detainee access to any intoxicant, narcotic, drug paraphernalia or drug not prescribed for his/her use by the medical staff.
7. If necessary, the transporting officers may increase the minimum restraints placed on the detainee at the outset of the trip, but at no time may reduce the minimum restraints. Since escorts may exercise no discretion in this matter and are prohibited from removing the restraints, the detainee shall visit a critically ill relative, attend a funeral or attend a family-related state court proceeding in restraints.
8. Escorts shall advise the detainee of the rules in effect during the trip, in a language or manner the detainee can understand.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall

be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

9. Among other things, the escorted detainee may not:
  - a. bring discredit to ICE/ERO;
  - b. violate any federal, state or local law;
  - c. make unauthorized phone call(s); or
  - d. arrange any visit(s) without the express permission of the facility administrator.
10. If the detainee breaches any of these rules, the responsible officer may decide to terminate the trip and immediately return to the facility.
11. Officers shall also remind the detainee that, during the trip and upon return to the facility, he/she is subject to searches in accordance with standard "2.10 Searches of Detainees," as well as tests for alcohol or drug use.
12. Officers may not accept gifts or gratuities from the detainee or any other person in appreciation for performing escort duties or for any other reason.
13. Escorts shall ensure that detainees with physical or mental disabilities are provided reasonable accommodations in accordance with security and safety concerns.



## 5.3 Marriage Requests

### I. Purpose and Scope

This detention standard ensures that each marriage request from an ICE/ERO detainee receives a case-by-case review, based on internal guidelines for approval of such requests.

The guidelines provided in this Detention Standard are internal and shall not be construed as creating rights for detainees or other persons or preventing the facility administrator from exercising discretion in conducting the required case-by-case review.

This detention standard applies to the following types of facilities housing ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Each marriage request from an ICE/ERO detainee shall be reviewed on a case-by-case basis.
2. Consistency in decisions to approve or deny a marriage request shall be achieved by the application of guidelines.

3. Ordinarily, a detainee’s request for permission to marry shall be granted.
4. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Marriage Requests” dated 12/2/2008.

### IV. References

None

### V. Expected Practices

#### A. Written Policy and Procedures Required

All facilities shall have in place written policy and procedures to enable eligible ICE/ERO detainees to

marry.

## **B. Detainee Notification**

The *National Detainee Handbook* and local facility supplement, provided each detainee upon admittance, shall advise detainees of the facility's marriage request procedures.

## **C. Detainee Request to Marry**

A detainee, or his/her legal representative, may submit to the facility administrator or Field Office Director (FOD) a written request for permission to marry.

The request must:

1. specifically express that the detainee is legally eligible to be married in the state where the detainee is being held; and
2. be accompanied by the intended spouse's written affirmation of his/her intent to marry the detainee.

## **D. Consideration and Approval**

### **1. SPCs and CDFs**

*The facility administrator may approve or deny a marriage request, using the guidelines that follow. Approval or denial of all marriage requests should be reviewed by the FOD or designee.*

- a. *Any facility administrator's decision to deny a marriage request shall be forwarded to the respective FOD for review.*
- b. *The Field Office Director (or designee), after whatever consultations he or she believes are advisable, may uphold or reverse the facility administrator's denial.*

If the request is denied, ICE/ERO shall notify the detainee, in writing, of the reasons for the denial within 30 days from the date of the request.

Detainees may seek legal assistance throughout the marriage application process.

## **3. IGSA's**

The facility administrator shall notify and consult the respective Assistant Field Office Director, who shall use the guidelines below to approve or deny the request. Approval or denial of all marriage requests should be reviewed by the FOD (or designee).

- a. The FOD (or designee), after whatever consultations he or she believes are advisable, may uphold or reverse the facility administrator's denial.
- b. If the request is approved, the marriage ceremony shall take place at the facility. If necessary under some extraordinary circumstances, ICE/ERO may assume temporary custody of the detainee for the marriage ceremony.

If the request is denied, ICE/ERO shall notify the detainee, in writing, of the reasons for the denial within 30 days from the date of the request.

Detainees may seek legal assistance throughout the marriage application process.

## **E. Guidelines**

When a detainee requests permission to marry:

1. The facility administrator or Field Office Director shall consider each marriage request on a case-by-case basis.
2. A detainee's request for permission to marry shall be denied if:
  - a. the detainee is not legally eligible to be married;
  - b. the detainee is not mentally competent, as determined by a qualified medical practitioner;
  - c. the intended spouse has not affirmed, in writing, his/her intent to marry the detainee;
  - d. the marriage would present a threat to the security or orderly operation of the facility; or
  - e. there are compelling government interests for

denying the request.

If the request is denied, the detainee may file an appeal to the Field Office Director.

3. When a request is approved, the detainee, legal representative or other individual(s) acting on his/her behalf must make all the marriage arrangements, including, but not limited to:
  - a. blood tests;
  - b. obtaining the marriage license; and
  - c. retaining an official to perform the marriage ceremony.

ICE/ERO personnel shall not participate in making marriage arrangements nor serve as witnesses in the ceremony.

4. The facility administrator or designated Field Office staff shall notify the detainee in a timely manner of a time and place for the ceremony.

The marriage may not interrupt regular or scheduled processing or action in a detainee's legal case. Specifically, it may neither interrupt nor stay any hearing, transfer to another facility or removal from the United States.

Transfers shall not occur solely to prevent a marriage.

5. Ordinarily, arrangements made by the detainee or

persons acting on his/her behalf shall be accommodated, consistent with the security and orderly operation of the facility, according to the following stipulations:

- a. the ceremony shall take place inside the facility; the detainee may not leave the facility to make arrangements;
- b. all expenses relating to the marriage shall be borne by the detainee or person(s) acting on his/her behalf; and
- c. the ceremony shall be private with no media publicity. Only individuals essential for the marriage ceremony, such as required witnesses may attend.

The facility administrator or FOD 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 for good cause in writing to the detainee. In such instances, the detainee may file an appeal.

## **G. Documentation in Detention File**

Once the marriage has taken place, the facility administrator shall forward original copies of all documentation to the detainee's A-file and maintain copies in the facility's detention file.



## 5.4 Recreation

### I. Purpose and Scope

This detention standard ensures that each detainee has access to recreational and exercise programs and activities, within the constraints of safety, security and good order.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

For all types of facilities, procedures that appear in italics with a marked (\*\*) on the page indicate optimum levels of compliance for this standard.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Detainees shall have daily opportunities at a reasonable time of day to participate in leisure-time activities outside their respective living areas.
2. Detainees shall have access to exercise opportunities and equipment at a reasonable time of day, including at least one hour daily of

physical exercise outside the living area, and outdoors when practicable. Facilities lacking formal outdoor recreation areas are encouraged to explore other, secure outdoor areas on facility grounds for recreational use. Daily indoor recreation shall also be available. During inclement weather, detainees shall have access to indoor recreational opportunities, preferably with access to natural light.

*\*\*Detainees shall have at least four hours a day access, seven days a week, to outdoor recreation, weather and scheduling permitted. Outdoor recreation shall support leisure activities, outdoor sports and exercise as referenced and defined by the National Commission on Correctional Health Care Standards, provided outside the confines of the housing structure and/or other solid enclosures.*

3. Any detainee housed in a facility that does not meet minimum standards for indoor and outdoor recreation shall be considered for voluntary transfer to a facility that does meet minimum standards for indoor and outdoor recreation.
4. Each detainee in a Special Management Unit (SMU) shall receive (or be offered) access to exercise opportunities and equipment outside the living area and outdoors, when practicable, unless documented security, safety or medical considerations dictate otherwise. Detainees in the SMU for administrative reasons shall receive at least one (1) hour a day, seven (7) times a week, detainees in the SMU for disciplinary reasons shall receive at least one (1) hour a day, five (5) times per week.
5. Each recreation volunteer who provides or participates in facility recreational programs shall 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.
6. The facility shall provide communication assistance to detainees with disabilities and

detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to English speaking detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Recreation” dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-5C-01, 5C-02, 5C-03, 5C-04, 2A-66, 5A-01, 6B-04, 7B-03, 7C-02, 7F-05.

### V. Expected Practices

#### A. Indoor and Outdoor Recreation

1. It is expected that every ICE/ERO detainee shall be placed in a facility that provides indoor and

outdoor recreation. However, in exceptional circumstances, a facility lacking outdoor recreation opportunities or any recreation area may be used to provide short-term housing.

2. If a facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight shall be provided.
3. If a detainee is housed for more than 10 days in a facility that provides neither indoor nor outdoor recreation, he/she may be eligible for a voluntary transfer to a facility that does provide recreation.
4. If a detainee is housed for more than three months in a facility that provides only indoor recreation, he/she may be eligible for a voluntary transfer to a facility that provides outdoor recreation.

#### B. Recreation Schedule

If outdoor recreation is available at the facility, each detainee in general population shall have access for at least one hour, seven days a week, at a reasonable time of day, weather permitting.

Detainees shall have access to clothing appropriate for weather conditions.

If only indoor recreation is available, detainees in general population shall have access for no less than one hour, seven days a week and shall have access to natural light.

*\*\*Detainees in the general population shall have access at least four hours a day, seven days a week to outdoor recreation, weather and scheduling permitted. Daily indoor recreation shall also be available. During inclement weather, detainees shall have access to indoor recreational opportunities with access to natural light.*

Recreation schedules shall be provided to the detainees or posted in the facility.

Under no circumstances shall the facility require detainees to forgo basic law library privileges for recreation privileges. (See standard “6.3 Law

Libraries and Legal Material.”)

### C. Recreation Specialist

The facility administrator shall designate an individual responsible for the development and oversight of the recreation program. Every facility with a rated capacity of 350 or more ICE detainees shall employ a fulltime recreation specialist with special training in implementing and overseeing a recreation program. The recreation specialist shall assess the needs and interests of the detainees.

### D. General Requirements

1. All facilities shall provide recreational opportunities for detainees with disabilities.
2. Exercise areas shall offer a variety of equipment. Weight training, if offered, must be limited to fixed equipment. Free weights are prohibited.
3. Cardiovascular exercise shall be available to detainees for whom outdoor recreation is unavailable.
4. Recreational activities shall be based on the facility’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.

Dayrooms in general population housing units shall offer board games, television and other sedentary activities.

Detention personnel shall supervise dayroom activities, distributing games and other recreation materials daily.

5. All detainees participating in outdoor recreation shall have access to drinking water and toilet facilities.
6. Detention or recreation staff shall search recreation areas before and after use to detect altered or damaged equipment, hidden contraband and potential security breaches. They

shall also issue all portable equipment items, and check each item for damage and general condition upon its return.

7. Programs and activities are subject to the facility’s security and operational guidelines and may be restricted at the facility administrator’s discretion.
8. Recreation areas shall be under continuous supervision by staff equipped with radios or other communication devices to maintain contact with the Control Center.
9. Contraband searches of detainees who are moving from locked cells or housing units to recreation areas shall be conducted in accordance with standard “2.10 Searches of Detainees.”
10. Detainees may engage in independent recreation activities, such as board games and small-group activities, consistent with the safety, security and orderly operation of the facility.
11. The facility administrator shall establish facility policy concerning television viewing in dayrooms. All television viewing schedules shall be subject to the facility administrator’s approval.

*\*\*Detainees shall be provided FM wireless headsets for television viewing, with access to appropriate language stations or choices.*

### E. Recreation for a Special Management Unit (SMU)

Recreation for detainees housed in the SMU shall occur separately from recreation for the general population.

Facilities are encouraged to maximize opportunities for group participation in recreation and other activities, consistent with safety and security considerations. Recreation for certain individuals shall occur separate from all other detainees when necessary or advisable to prevent assaults and reduce management problems. The facility administrator shall develop and implement procedures to ensure that detainees who must be kept apart never



participate in activities in the same location at the same time.

Unless documented security, safety or medical considerations dictate otherwise:

Each detainee in a Special Management Unit (SMU) shall receive (or be offered) access to exercise opportunities and equipment outside the living area and outdoors, unless documented security, safety or medical considerations dictate otherwise.

Detainees in the SMU for administrative reasons shall be offered at least one hour of exercise opportunities per day, seven days a week, outside their cells, and outdoors when practicable, and scheduled at a reasonable time.

*\*\*Facilities operating at the optimal level shall offer detainees at least two hours of recreation or exercise opportunities per day, seven days a week.*

Detainees in the SMU for disciplinary reasons shall be offered at least one hour of exercise opportunities per day, five days per week, outside their cells, and outdoors when practicable, and scheduled at a reasonable time.

*\*\*Facilities operating at the optimal level shall offer detainees at least one hour of recreation or exercise opportunities per day, seven days a week.*

Where cover is not provided to mitigate inclement weather, detainees shall be provided weather-appropriate equipment and attire.

The recreation privilege shall be denied or suspended only if the detainee's recreational activity may unreasonably endanger safety or security:

1. A detainee may be denied recreation privileges only with the facility administrator's written authorization, documenting why the detainee poses an unreasonable risk even when recreating alone; however, when necessary to control an immediate situation for reasons of safety and security, SMU staff may deny an instance of recreation, upon verbal approval from the shift

supervisor, and shall document the reasons in the unit logbook(s). The supervisor may also require additional written documentation for the facility administrator. When a detainee in an SMU is deprived of recreation (or any usual authorized items or activity), a written report of the action shall be forwarded to the facility administrator. Denial of recreation must be evaluated daily by a shift supervisor.

2. A detainee in disciplinary segregation may temporarily lose recreation privileges upon a disciplinary panel's written determination that he/she poses an unreasonable risk to the facility, himself/herself or others.
3. When recreation privileges are suspended, the disciplinary panel or facility administrator shall provide the detainee written notification, as well as documentation of the reason for the suspension, any conditions that must be met before restoration of privileges, and the duration of the suspension provided the requisite conditions are met for its restoration.
4. The case of a detainee denied recreation privileges shall be reviewed at least once each week as part of the reviews required for all detainees in SMU status.
5. In accordance with SMU procedures, and using the forms required in standard "2.12 Special Management Units," the reviewer(s) shall state, in writing, whether the detainee continues to pose a threat to self, others, or facility security and, if so, why.
6. Denial of recreation privileges for more than seven days requires the concurrence of the facility administrator and a health care professional. It is expected that such denials shall rarely occur and only in extreme circumstances.
7. The facility shall notify the ICE/ERO Field Office Director in writing when a detainee is denied recreation privileges in excess of seven days.

## F. Other Programs and Activities

Facilities shall offer access to leisure reading materials, through libraries with regular hours, book carts or other means. Reading materials in English, Spanish and, if practicable, other languages, should be made available.

*\*\* Facilities shall offer other programmatic activities, such as:*

- 1. educational classes or speakers;*
- 2. sobriety programs such as alcoholics anonymous; and*

- 3. other organized activities or recreational programs.*

## G. Volunteer Program Involvement

A volunteer group may provide a special recreational or educational program, consistent with security considerations, availability of detention personnel to supervise participating detainees, and sufficient advance notification to the facility administrator.

Standard “5.7 Visitation” details requirements that must be met for a volunteer to be approved to visit with or provide religious activities for detainees.

## 5.5 Religious Practices

### I. Purpose and Scope

This detention standard ensures that detainees of different religious beliefs are provided reasonable and equitable opportunities to participate in the practices of their respective faiths, constrained only by concerns about safety, security and the orderly operation of the facility.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

For all types of facilities, procedures that appear in italics with a marked (\*\*) on the page indicate optimum levels of compliance for this standard.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”):

1. Detainees shall 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 facility;
2. All religions represented in a detainee population shall have equal status without discrimination based on any detainee’s race, ethnicity, religion, national origin, gender, sexual orientation or disability;
3. Each facility’s religious program shall be planned, administered and coordinated in an organized and orderly manner;
4. Adequate space, equipment and staff (including security and clerical) shall be provided for in order to conduct and administer religious programs;
5. The chaplain or religious services coordinator 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 religious services provider staff. Detainees are encouraged to provide information about local religious providers;
6. Each facility’s religious program shall be augmented and enhanced by community clergy, contractors, volunteers and groups who provide individual and group assembly religious services and counseling;
7. Detainees in Special Management Units (SMUs) and hospital units shall have access to religious activities and practices to the extent compatible with security and medical requirements;
8. Special diets shall be provided for detainees whose religious beliefs require adherence to religious dietary laws; and
9. Detainees shall be provided information about religious programs at the facility, including how to contact the chaplain or religious services coordinator, how to request visits or services by other religious services providers, how to request religious diets and how to access religious property and headwear as part of the facility’s admission and orientation program in a language



or manner the detainee can understand.

10. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Religious Practices” dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-5C-17, 5C-18, 5C-19, 5C-20, 5C-21, 5C-22, 5C-23, 5C-24, 2A-66, 4A-10, 6B-02, 6B-05, 7B-03, 7F-04.

ICE/ERO *Performance-based National Detention Standards 2011*:

- “4.1 Food Service”; and
- “5.7 Visitation.”

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb et seq.

Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc et seq.

## V. Expected Practices

### A. Religious Opportunities and Limitations

1. Detainees shall have opportunities to engage in practices of their religious faith consistent with safety, security and the orderly operation of the facility. Religious practices to be accommodated are not limited to practices that are compulsory, central or essential to a particular faith tradition, but cover all sincerely held religious beliefs. Attendance at all religious activities is voluntary.

Efforts shall be made to allow for religious practice in a manner that does not adversely affect detainees not participating in the practice.

Detainees cannot be required to participate in or attend a religious activity in order to receive a service of the facility or participate in other, non-religious activities. Chaplains, religious services coordinators and volunteers shall not provide unsolicited religious services or counseling to detainees.

2. Religious activities shall be open to the entire detainee population, without discrimination based on a detainee’s race, ethnicity, religion, national origin, gender, sexual orientation or disability.

Language services shall be provided to detainees who have limited English proficiency to provide them with meaningful access to religious activities. As needed, accommodations will be provided to detainees with disabilities to provide them with equal access to religious services.

3. When necessary for the security or the orderly

operation of the facility, the facility administrator may discontinue a religious activity or practice or limit participation to a reasonable number of detainees or to members of a particular religious group after consulting with the chaplain or religious services coordinator. Facility records shall reflect the limitation or discontinuance of a religious practice, as well as the reason for such limitation or discontinuance.

4. Ordinarily, when the nature of the activity or practice (e.g., fasts, ceremonial meals, headwear requirements, work proscriptions) indicates a need for such a limitation, only those detainees whose files reflect the pertinent religious preference shall be included.
5. When a detainee submits a request concerning the reason for denial of access to religious activities, facilities or meals, a copy of the request and response to the request shall be placed in the detention file.

## **B. Religious Preferences**

Each detainee shall designate any religious preference, or none, during in processing. Staff, contractors and volunteers may not disparage the religious beliefs of a detainee, nor coerce or harass a detainee to change religious affiliation.

A detainee may request to change his/her religious preference designation at any time by notifying the chaplain, religious services coordinator or other designated individual in writing, and the change shall be effected in a timely fashion.

In the interest of maintaining the security and orderly running of the facility and to prevent abuse or disrespect by detainees of religious practice or observance, the chaplain or religious services coordinator shall monitor patterns of changes in declarations of religious preference.

In determining whether to allow a detainee to participate in specific religious activities, staff may refer to the initial religious preference information

and any subsequent changes in the detainee's religious designation. Detainees whose files show "No Preference" may be restricted from participation in those activities deemed appropriate for members only.

## **C. Chaplains or Other Religious Services Coordinators**

The facility administrator shall designate a staff member, contractor or volunteer to manage and coordinate religious activities for detainees. Ordinarily, that person shall be the facility chaplain, who shall, in cooperation with the facility administrator and staff, plan, direct and supervise all aspects of the religious program, including approval and training of both lay and clergy volunteers from faiths represented in the detainee population. The facility administrator shall provide non-detainee clerical staff support for confidential materials.

The chaplain or other religious services coordinator, regardless of his/her specific religious affiliation, shall have basic knowledge of different religions and shall ensure equal status and protection for all religions.

The chaplain or other religious services coordinator shall have physical access to all areas of the facility to serve detainees.

A chaplain shall have a minimum qualification of clinical pastoral education or specialized training, and endorsement by the appropriate religious-certifying body. In lieu of these, the facility administrator may accept adequate documentation of recognized religious or ministerial position in the faith community.

The chaplain shall be available to provide pastoral care and counseling to detainees who request it, both through group programs and individual services. Detainees who belong to a religious faith different from that of the chaplain or religious services provider staff 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 detainee to explain special or unfamiliar requests.

If the facility has a religious services coordinator rather than a chaplain, the coordinator shall have the necessary training to connect detainees with a broad range of religious services and be prepared to arrange religious services for multiple faith traditions and connect incoming detainees with resources and services specific to the detainee's particular faith.

The term "individual services" includes counseling services provided to individual detainees or members of their families in personal crisis and family emergency situations.

#### **D. Schedules and Facilities**

All facilities shall designate adequate space for religious activities.

This designated space must be sufficient to accommodate the needs of all religious groups in the detainee population fairly and equitably and the general area shall include office space for the chaplain, storage space for items used in religious programs, and proximity to lavatory facilities for staff and volunteers.

Religious service areas shall be maintained in a neutral fashion suitable for use by various faith groups.

The chaplain or religious services coordinator shall schedule and direct the facility's religious activities, and current program schedules shall be posted on all unit and detainee bulletin boards in languages understood by a majority of detainees.

When scheduling approved religious activities, chaplains or religious services coordinator must consider both the availability of staff supervision and the need to allot time and space equitably among different groups. The chaplain or religious services coordinator shall not ordinarily schedule religious services to conflict with meal times.

If outdoor recreation is available at the facility, detainees shall have opportunities for outside worship, prayer and meditation, which shall be provided in a manner that does not conflict with meal times.

#### **E. Contractors and Volunteers**

All facilities shall 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 religious services coordinator and other staff shall be cognizant of the need for representation from all cultural and socioeconomic parts of the community. Each facility shall provide security, including staff escorts, to allow such individuals and groups facility access for sanctioned religious activities.

The chaplain or religious services coordinator may contract with representatives of faith groups in the community to provide specific religious services that he/she cannot personally deliver, and may secure the assistance and services of volunteers.

"Representatives of faith groups" includes both clergy and spiritual advisors. All contractual representatives of detainee faith groups shall be afforded the same status and treatment to assist detainees in observing their religious beliefs, unless the security and orderly operation of the facility warrant otherwise.

Standard "5.7 Visitation" details requirements that must be met for a volunteer to be approved to visit with and/or provide religious activities for detainees, including advance notice, identification, a background check, an orientation to the facility and a written agreement to comply with applicable rules and procedures. Visits from religious personnel shall not count against a detainee's visitor quota. Provided they meet established security requirements for entrance into the facility, religious services providers' interpreters shall be allowed to



accompany the religious services provider within the facility.

The facility 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 facility.

Detainees who are members of faiths not represented by clergy may conduct their own services, provided these do not interfere with facility operations.

## **F. Pastoral Visits**

If requested by a detainee, the chaplain or religious services coordinator or designee shall facilitate arrangements for pastoral visits by a clergyperson or representative of the detainee's faith.

The chaplain or religious services coordinator may request documentation of the person's religious credentials, as well as a criminal background check.

Pastoral visits shall ordinarily take place in a private visiting room during regular visiting hours. Accommodation may be made in the legal visitation area when available.

## **G. Detainees in Special Management (SMU) and Hospital Units**

Detainees in an SMU (e.g., administrative, disciplinary or protective custody) or hospital unit shall be permitted to participate in religious practices, consistent with the safety, security and orderly operation of the facility.

Detainees in an SMU or hospital unit shall have regular access to the chaplain or other religious services provider staff. The chaplain or other religious services provider staff shall provide pastoral care in SMUs and hospital units weekly at minimum.

Detainees of any faith tradition may ordinarily have access to official representatives of their faith groups while housed in SMUs or hospital units, by requesting such visits through the chaplain or other

religious service coordinator. Requests shall be accommodated consistent with the terms of the representative's contract and the security and orderly operation of the facility.

If the representative of the faith group is a volunteer, he/she shall at all times be escorted in an SMU.

## **H. Introduction of New or Unfamiliar Religious Components**

If a detainee requests the introduction of a new or unfamiliar religious practice, the chaplain or religious services coordinator may ask the detainee to provide additional information to use in deciding whether to include the practice.

Detainees may make a request for the introduction of a new component to the Religious Services program (e.g., schedule, meeting time and space, religious items and attire) to the chaplain or religious services coordinator. The chaplain or religious services coordinator may ask the detainee to provide additional information to use in deciding whether to include the practice. Ordinarily, the process shall require up to 30 business days for completion.

The chaplain or religious services coordinator shall research the request and make recommendations to the facility administrator, who shall add his/her own recommendations and forward them to the respective Field Office Director for approval. Such decisions are subject to the facility's requirement to maintain a safe, secure and orderly facility, and the availability of staff for supervision. The Field Office Director shall forward the final decision to the facility administrator, and the chaplain or religious services coordinator shall communicate the decision to the detainee.

## **I. Religious Holy Days**

Each facility shall have in place written policy and procedures to facilitate detainee observance of important holy days, consistent with the safety, security and orderly operation of the facility, and the

chaplain or religious services coordinator shall work with detainees to accommodate proper observances.

The facility administrator shall facilitate the observance of important religious holy days that involve special fasts, dietary regulations, worship or work proscription. When the facility administrator, chaplain or religious services provider is unfamiliar with the requested observance, the facility administrator may direct the chaplain or religious services coordinator to consult with community representatives of the detainee's faith group and other appropriate sources.

### **J. Religious Property and Personal Care**

Each facility administrator shall allow detainees to have access to personal religious property, consistent with the safety, security and orderly operation of the facility. If necessary, the religious significance of such items shall be verified by the chaplain prior to facility administrator approval. The facility administrator may also direct the chaplain or religious services coordinator to obtain information and advice from representatives of the detainee's faith group or other appropriate sources, about the religious significance of the items.

Detainee 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 detainee's personal property and are subject to normal considerations of safety, security and orderly operation of the facility.

As is consistent with the safety, security and orderly operation of the facility, the facility administrator shall ordinarily allow a detainee to wear or use personal religious items during religious services, ceremonies and meetings in the chapel, and may, upon request of a detainee, allow a detainee to wear or use certain religious items throughout the facility.

Items of religious wearing apparel include, but are not limited to:

1. prayer shawls and robes;
2. kurda or ribbon shirts;
3. medals and pendants;
4. beads; and
5. various types of headwear.

"Appendix 5.5.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 facility. Nothing in these guidelines is intended to prevent facilities from making individualized decisions based on the need to maintain good order and the safety of detainees and staff. Any denial and the reason for it shall be documented and placed in the alien's detention file.

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 facility, subject to the normal considerations of the safety, security and orderly operation of the facility, including inspection by staff. Religious headwear and other religious property shall be handled with respect at all times, including during the in-take process.

Consistent with safety, security and the orderly operation of the facility, the facility shall not cut or shave religiously significant hair.

A detainee who wishes to have religious books, magazines or periodicals must comply with the facility's general rules for ordering, purchasing, retaining and accumulating personal property. Religious literature is permitted in accordance with the procedures governing incoming publications. Distribution to detainees of religious literature purchased by or donated to ICE/ERO is contingent upon approval from the chaplain or religious services coordinator.

## K. Dietary Requirements

When a detainee's religion requires special food services, daily or during certain holy days or periods that involve fasting, restricted diets, etc., staff shall make all reasonable efforts to accommodate those requirements (e.g., by modifying the detainee's menus to exclude certain foods or food combinations or providing the detainee's meals at unusual hours).

A detainee who wants to participate in the religious diet ("common fare") program may initiate the "Authorization for Common Fare Participation" form that is attached to standard "4.1 Food Service." That standard also details the circumstances under which a detainee may be removed from a special religious diet because he/she has failed to observe those dietary restrictions.

"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 religious services coordinator shall consult with the medical department.

## L. Religious Fasts

The chaplain or religious services coordinator shall develop the religious fast schedule for the calendar year and shall provide it to the facility administrator or designee. There are generally two different types of fasts: a public fast and a private or personal fast.

When detainees observe a public fast that is mandated

by law or custom for all the faith adherents (e.g., Ramadan, Lent, Yom Kippur), the facility shall provide a meal nutritionally equivalent to the meal(s) missed. Public fasts usually begin and end at specific times.

When a detainee fasts for personal religious reasons, no special accommodations need to be made for the meal(s) missed. Requests for meals after a personal fast shall be determined by the facility administrator on a case-by case basis.

## M. Work Assignments

Detainees who have voluntary work assignments shall not be compelled to work on their religious holy days.

## N. Religious Use of Wine

Religious use of wine by clergy members is generally permitted when mandated by the particular faith and pursuant to strict controls and supervision, to include the following provisions:

1. Only a small amount of wine for clergy members and that which is necessary to perform religious ceremonies or services shall be permitted in the facility.
2. All wine brought into the facility shall be secured in an appropriate area by staff prior to the religious ceremony or service for which the wine is needed.
3. Following the religious ceremony or service, unused portions of wine shall be immediately discarded, stored in a secure area, or removed from the facility.

## O. Death or Serious Illness of Family Members

The facility administrator will establish procedures to involve the chaplain or religious services coordinator in notifying detainees of serious illness or death of their family members.





## Appendix 5.5.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 facility. Nothing in these guidelines is intended to prevent facilities from making individualized decisions based on the need to maintain good order and the safety of detainees and staff. Any denial of accommodation and the reason for it shall be documented and placed in the alien's detention file.

### A. Religious Headwear

Examples of religious headwear include:

- yarmulke (Jewish)
- kufi (Muslim)
- hijab (Muslim; worn by women)
- crown (Rastafarian)
- turban (Sikh)

Facilities may restrict the color, size or other features of religious headwear, as necessary to maintain the safety, security and the orderly operation of the facility. Where facilities restrict the color, size, or other features of religious headwear, and the detainee's personal religious headwear does not conform to the standard, the facility must ensure that detainees are provided conforming religious headwear for free or at a de minimus cost. The chaplain or religious services coordinator, in consultation with community representatives of the detainee's faith group and other appropriate sources, when necessary, shall ensure that the facility 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
- Kurda or ribbon shirts during ceremonial use

### 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 facility'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 is generally appropriate for low and medium security detainees.
- Rosaries and prayer beads.
- Oils.
- Prayer rugs.
- Prayer rocks.

- Phylacteries.
- Religious medallions and pendants.



## 5.6 Telephone Access

### I. Purpose and Scope

This detention standard ensures that detainees may maintain ties with their families and others in the community, legal representatives, consulates, courts and government agencies by providing them reasonable and equitable access to telephone services.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

For all types of facilities, procedures that appear in italics with a marked (\*\*) on the page indicate optimum levels of compliance for this standard.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Detainees shall have reasonable and equitable access to reasonably priced telephone services.
2. Detainees with hearing or speech disabilities shall be granted reasonable accommodations to allow for equal access to telephone services.
3. Detainees in Special Management Units (SMU) shall have access to telephones, commensurate with facility security and good order.
4. Detainees and their legal counsel shall be able to communicate effectively with each other.
5. Privacy for detainee telephone calls regarding legal matters shall be ensured.
6. Telephone access procedures shall foster legal access and confidential communications with attorneys.
7. Detainees shall be able to make free calls to the ICE/ERO-provided list of free legal service providers for the purpose of obtaining initial legal representation, to consular officials, to the Department of Homeland Security (DHS) Office of the Inspector General (OIG), and to the ICE Office of Professional Responsibility (OPR) Joint Intake Center (JIC). Indigent detainees, who are representing themselves pro se, shall be permitted free calls on an as-needed basis to family or other individuals assisting with the detainee’s immigration proceedings.
8. Telephones shall be maintained in proper working order.
9. Facilities shall strive to reduce telephone costs, including through the use of emerging telecommunications, voiceover and Internet protocol technologies.
10. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide

detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Telephone Access” dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-2A-65, 2A-66, 5B-11, 5B-12, 6a-02, 6A-09.

ICE/ERO *Performance-based National Detention Standards 2011*: “2.13 Staff-Detainee Communication,” in regard to monitoring and documenting telephone serviceability.

### V. Expected Practices

#### A. Telephones and Telephone Services

##### 1. Number

To ensure sufficient access, each facility shall provide at least one operable telephone for every 25 detainees.

*\*\*Facilities shall be operating at the optimal level when at least one telephone is provided for every ten (10) detainees.*

##### 2. Cost

Generally, detainees or the persons they call shall be responsible for the costs of telephone calls; required exceptions are listed below.

Each facility shall provide detainees with access to reasonably priced telephone services. Contracts for such services shall comply with all applicable state and federal regulations and be based on rates and surcharges comparable to those charged to the general public. Any variations shall reflect actual costs associated with the provision of services in a detention setting. Contracts shall also provide the broadest range of calling options including, but not limited to, international calling, calling cards and collect telephone calls, determined by the facility administrator to be consistent with the requirements of sound detention facility management. Facilities shall post a list of card and calling rates in each housing unit. Facility administrators are encouraged to explore the use of new technologies which can facilitate the provision of cost effective means for enhancing detainees’ ability to communicate by telephone, such as, and not limited to, wireless and/or internet communications.

##### 3. Maintenance

Each facility shall maintain detainee telephones in proper working order. Designated facility staff shall inspect the telephones daily, promptly report out-of-order telephones to the repair service so that required repairs are completed quickly. This information shall be logged and maintained by each Field Office. Facility staff shall notify detainees and the ICE/ERO free legal service providers of procedures for reporting problems with telephones.

ICE/ERO headquarters shall maintain and provide Field Offices a list of telephone numbers for current free legal service providers, consulates and the Department of Homeland Security’s (DHS) Office of the Inspector General (OIG), as determined by ICE. All Field Offices are responsible for ensuring facilities which house ICE detainees under their jurisdiction are provided with current pro bono legal service

information.

#### 4. Monitoring Detainee Telephone Services

##### a. Facility Staff Requirements

Facility 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 phone has a dial tone, when testing equipment the officers must be able to demonstrate that an individual has the ability to make calls using the free call platform. Any identified problems must immediately be logged and reported to the appropriate facility and ICE/ERO staff. ICE/ERO staff shall review and follow up on problems reported by detainees and others.

#### B. Monitoring of Detainee Telephone Calls

Each facility shall have a written policy on the monitoring of detainee telephone calls. If telephone calls are monitored, the facility shall:

1. include a recorded message on its phone system stating that all telephone calls are subject to monitoring;
2. notify detainees in the detainee handbook, or equivalent, provided upon admission; and
3. at each monitored telephone, place a notice that states the following:
  - a. that detainee calls are subject to monitoring; and
  - b. 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 facility shall coordinate in posting the notice in Spanish and in the language of significant segments of the population with limited English proficiency, where practicable.

A detainee's call to a court, a legal representative, DHS OIG, DHS Civil Rights and Civil Liberties (CRCL) or for the purposes of obtaining legal

representation, may not be electronically monitored without a court order.

#### C. Detainee Notification

Each facility shall provide telephone access rules in writing to each detainee upon admission, and also shall post these rules where detainees may easily see them. ICE/ERO and the facility shall coordinate in posting these rules where practicable in Spanish and in the language of significant segments of the population with limited English proficiency.

Telephone access hours shall also be posted. Updated telephone and consulate lists shall be posted in detainee housing units. Translation and interpretation services shall be provided as needed.

#### D. Detainee Access

Each facility administrator shall establish and oversee rules and procedures that provide detainees reasonable and equitable access to telephones during established facility "waking hours" (excluding the hours between lights-out and the morning resumption of scheduled activities). Telephones shall be located in parts of the facility that are accessible to detainees. Telephone access hours shall be posted near the telephones.

Each facility shall provide detainees access to international telephone service.

Ordinarily, a facility may restrict the number and duration of general telephone calls only for the following reasons.

##### 1. Availability

When required by the volume of detainee telephone demand, rules and procedures may include, but are not limited to, reasonable limitations on the duration and the number of calls per detainee, the use of predetermined time-blocks and institution of an advanced sign-up system.

##### 2. Orderly Facility Operations

Calls may be restricted or limited if necessary to



prevent interference with counts, meals, scheduled detainee movements, court schedules, or other events constituting the orderly operation of the facility.

### **3. Emergencies**

Telephone access and use may be limited in the event of escapes, escape attempts, disturbances, fires, power outages, etc. Telephone privileges may be suspended entirely during an emergency, but only with the authorization of the facility administrator or designee and only for the briefest period necessary under the circumstances. If suspension of telephone access exceeds 12 hours, ICE/ERO should be notified.

### **E. Direct or Free Calls**

Even if telephone service is generally limited to collect calls, each facility shall permit detainees to make direct or free calls to the offices and individuals listed below. The Field Office Director shall ensure that all information is kept current and is provided to each facility. Updated lists need to be posted in the detainee housing units. A facility may place reasonable restrictions on the hours, frequency and duration of such direct and/or free calls, but may not limit a detainee's attempt to obtain legal representation. Full telephone access shall be granted in order for a detainee to contact the following:

- the Executive Office for Immigration Review or local immigration court;
- the Board of Immigration Appeals;
- federal and state courts where the detainee is or may become involved in a legal proceeding;
- consular officials;
- DHS/OIG;
- legal representatives, to obtain legal representation, or for consultation when subject to expedited removal (when a detainee is under an expedited removal order, his/her

ability to contact pro bono legal representatives shall not be restricted);

- legal service providers or organizations listed on the ICE/ERO free legal service provider list;
- United Nations High Commissioner for Refugees (UNHCR), from asylum-seekers and stateless individuals;
- federal, state or local government offices to obtain documents relevant to his/her immigration case;
- immediate family or others for detainees in personal or family emergencies or who otherwise demonstrate a compelling need (to be interpreted liberally); or
- ICE/OPR Joint Intake Center (JIC).

#### **1. Request Forms**

Free and direct calls shall be easily accessible. If detainees are required to complete request forms to make direct or free calls, facility staff must assist them as needed, especially illiterate or non-English speaking detainees. The detainees should also be permitted to seek assistance from their legal representatives, family, or other detainees.

#### **2. Time Requirements**

Staff shall allow detainees to make such calls as soon as possible after submission of requests, factoring in the urgency stated by the detainee. Access shall be granted within 24 hours of the request, and ordinarily within eight facility-established "waking hours." Staff must document and report to ICE/ERO any incident of delay beyond eight "waking hours."

#### **3. Indigent Detainees**

Ordinarily, a detainee is considered "indigent" if he/she has less than \$15.00 in his/her account for ten (10) days. A facility shall make a timely effort to determine indigence.

Indigent detainees are afforded the same telephone access and privileges as other detainees. Each facility

shall enable all detainees to make calls to the ICE/ERO-provided list of free legal service providers and consulates at no charge to the detainee or the receiving party. The indigent detainee may request a call to immediate family or others in personal or family emergencies or on an as-needed basis.

#### **4. Phone System Limitations**

If the limitations of an existing phone system preclude meeting these requirements, the facility administrator must notify ICE/ERO so that a means of telephone access may be provided.

SPCs, CDFs, and dedicated IGSAAs shall require its telephone service providers to program and keep current, the telephone system to permit detainees free calls to numbers on the official pro bono legal representation list and to consulates. Other facilities shall adopt equivalent procedures.

### **F. Legal Calls**

#### **1. Restrictions**

A facility may neither restrict the number of calls a detainee 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, they shall be no shorter than 20 minutes, and the detainee shall be allowed to continue the call at the first available opportunity, if desired.

A facility may place reasonable restrictions on the hours, frequency and duration of such direct and/or free calls but may not otherwise limit a detainee's attempt to obtain legal representation.

#### **2. Privacy**

For detainee telephone calls regarding legal matters, each facility shall ensure privacy by providing a reasonable number of telephones on which detainees can make such calls without being overheard by staff or other detainees. Absent a court order, staff may not monitor phone calls made in reference to legal

matters.

The facility shall inform detainees to contact an officer if they have difficulty making a confidential call relating to a legal proceeding. If notified of such a difficulty, the officer shall take measures to ensure that the call can be made confidentially.

Privacy may be provided in a number of ways, including:

- a. telephones with privacy panels (side partitions) that extend at least 18 inches to prevent conversations from being overheard;
- b. telephones placed where conversations may not be readily overheard by others; or
- c. office telephones on which detainees may be permitted to make such calls; and
- d. detainees shall be supervised within eyeshot, but out of earshot

### **G. Telephone Access for Detainees with Disabilities**

The facility shall provide a TTY device or Accessible Telephone (telephones equipped with volume control and telephones that are hearing-aid compatible for detainees who are deaf or hard of hearing). Detainees who are deaf or hard of hearing shall be provided access to the TTY on the same terms as hearing detainees are provided access to telephones. Except to the extent that there are time limitations, detainees using the TTY shall be granted additional time, consistent with safety and security concerns..

If an Accessible Telephone or TTY is not available in the same location as telephones used by other detainees, detainees shall be allotted additional time to walk to and from the Accessible Telephone or TTY location. Consistent with the order and safety of the facility, the facility shall ensure that the privacy of telephone calls by detainees using Accessible Telephones or TTY is the same as other detainees using telephones.

*\*\* The facility shall maintain other equipment, such as video relay service and video phones, for detainees who are deaf or hard of hearing.*

Accommodations shall also be made for detainees with speech disabilities.

Consistent with Standard 4.8 “Disability Identification, Assessment, and Accommodation,” the facility shall engage in an interactive and individualized process that considers whether a detainee with a disability needs any additional accommodation to access facility telephones.

## **H. Telephone Privileges in Special Management Units (SMU)**

While there are differences in telephone access in SMU, depending on whether a detainee is in Administrative Segregation or Disciplinary Segregation, in general a detainee in either status may be reasonably restricted from using or having access to a phone for the following reasons.

- If that access is used for criminal purposes or would endanger any person, including that detainee.
- If the detainee damages the equipment provided.
- For the safety, security and good order of the facility.

In such instances, staff must clearly document why such restrictions are necessary to preserve the safety, security and good order of the facility in the appropriate SMU log. Detainees and their legal counsel shall nevertheless be accommodated in order for them to be able to communicate effectively with each other. Telephone access for legal calls, courts, government offices (including the DHS OIG and the DHS JIC) and embassies or consulates shall not be denied.

### **1. Administrative Segregation**

Generally, detainees in administrative segregation

should receive the same privileges available to detainees in the general population, subject to any existing safety and security considerations. This requirement applies to a detainee in Administrative Segregation pending a hearing because he/she has been charged with a rule violation, as well as a detainee in Administrative Segregation for other than disciplinary reasons, such as protective custody or suicide risk.

## **2. Disciplinary Segregation**

Detainees in Disciplinary Segregation may be restricted from using telephones to make general calls as part of the disciplinary process. Even in Disciplinary Segregation, however, detainees shall have some access for special purposes. Ordinarily, staff shall permit detainees in Disciplinary Segregation to make direct and/or free and legal calls as previously described in above in sections V.E and V.F, except in the event of compelling and documented reasons of threats to the safety, security and good order of the facility.

## **I. Inter-facility Telephone Calls**

Upon a detainee’s request, facility staff shall make special arrangements to permit the detainee to speak by telephone with an immediate family member detained in another facility. Immediate family members include spouses, common-law spouses, parents, stepparents, foster parents, brothers, sisters, natural or adopted children and stepchildren.

Reasonable limitations may be placed on the frequency and duration of such calls. Facility staff shall liberally grant such requests to discuss legal matters and shall afford the detainee privacy to the extent practicable, while maintaining adequate security.

## **J. Incoming Calls**

The facility shall take and deliver telephone messages to detainees as promptly as possible.

When facility staff receives an emergency telephone



call for a detainee, the caller's name and telephone number shall be obtained and promptly given to the detainee. The detainee shall be permitted to promptly return an emergency call at their own cost

within the constraints of security and safety. The facility shall enable indigent detainees to make a free return emergency call.

## 5.7 Visitation

### I. Purpose and Scope

This detention standard ensures that detainees shall be able to maintain morale and ties through visitation with their families, the community, legal representatives and consular officials, within the constraints of the safety, security and good order of the facility.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

For all types of facilities, procedures that appear in italics with a marked (\*\*) on the page indicate optimum levels of compliance for this standard.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

News media interviews and tours are outlined in standard “7.2 Interviews and Tours.”

Conjugal visits for ICE/ERO detainees are prohibited.

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Facilities are encouraged to allow detainees to

maintain ties to their family and friends in the community. Detainees shall be able to receive visits from legal representatives, consular officials and others in the community.

2. Visits between legal representatives and assistants and an individual detainee are confidential and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings.
3. Detainees shall be advised of their right to contact their consular representatives and receive visits from their consulate officers.
4. Facilities are encouraged to provide opportunities for both contact and non-contact visitation with approved visitors during both day and evening hours.
5. Information about visiting policies and procedures shall be readily available to the public.
6. The number of visitors a detainee may receive and the length of visits shall be limited only by reasonable constraints of space, scheduling, staff availability, safety, security and good order. Generally visits should be for the maximum period practicable but not less than one hour with special consideration given to family circumstances and individuals who have traveled long distances.
7. Visitors shall be screened and approved upon arrival and shall be required to adequately identify themselves and register to be admitted into a facility, so that safety, security and good order can be maintained.
8. A background check shall be conducted on all new volunteers prior to their being approved to provide services to detainees.
9. Each new volunteer shall complete an appropriate, documented orientation program and sign an acknowledgement of his or her understanding of the applicable rules and procedures and agreement to comply with them.

10. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Visitation” dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF: 5B-01, 5B-02, 5B-03, 5B-04, 2A-21, 2A-27, 2A-61, 6A-06, 7B-03, 7C-02, 7F-05, 7F-06.

ICE/ERO *Performance-based National Detention Standards 2011*:

- “2.10 Searches of Detainees”;

- “3.1 Disciplinary System”; and
- “7.2 Interviews and Tours.”

## V. Expected Practices

### A. Overview

Facilities that house ICE/ERO detainees shall provide visiting procedures for detainees to maintain communication with persons in the community. Safety, security and good order are always primary considerations in a detention facility, and visitors must be properly identified and attired and are subject to search upon entering the facility and at any other time. Except as otherwise permitted herein, visitors may not give anything directly to a detainee, although it may be permissible for visitors to leave certain items and funds for a detainee with a staff member, at the discretion of the facility administrator. An itemized receipt that lists funds and property brought for the detainee shall be provided to the visitor.

Any violation of the visitation rules, by the detainee, may result in disciplinary action against the detainee and introduction of contraband or other criminal violations may lead to criminal prosecution of a visitor, detainee or both.

Differences in the various conditions of each visit, including who may visit, when they may visit, how they may be approved to visit and where in the facility they may visit, are detailed later in this standard and are dependent on the type of visitation, according to the following designations:

1. social visitation: family, relatives, friends and associates; minors may be subject to special restrictions (see “I. Visits by Family and Friends” in this standard);
2. legal visitation: attorneys, other legal representatives, legal assistants (see “J. Visits by Legal Representatives and Legal Assistants” in this standard);



3. consultation visitation: for detainees subject to expedited removal (see “K. Consultation Visits for Detainees Subject to Expedited Removal” in this standard);
4. consular visitation: similar to legal visitation but with consular officials who have state department issued identification (see “L. Consular Visitation” in this standard);
5. community service organization visitation: representatives of civic, religious, cultural groups, etc. (see “M. Visits from Representatives of Community Service Organizations” in this standard); and
6. other special visitation (see “N. Other Special Visits” in this standard; for non-governmental organizations (NGO) please see standard “7.2 Interviews and Tours.”)

## **B. General**

Each facility shall establish written visiting procedures, including a schedule and hours of visitation and make them available to the public.

Each facility administrator shall decide whether to permit contact visits, as appropriate for the facility’s physical plant and detainee population. Exceptions to this standard can be made by the facility administrator on a case-by-case basis when warranted by compelling circumstances or individual needs or conduct.

A facility administrator may temporarily restrict visiting when necessary to ensure the security and good order of the facility. Each restriction or denial of visits, including the duration of and reasons for the restriction, shall be documented in writing.

## **C. Notification of Visiting Rules and Hours**

Each facility shall:

1. Provide written notification of visitation rules and hours in the detainee handbook or local supplement given each detainee upon admission,

and post those rules and hours where detainees can easily see them. Such information shall be posted in each housing unit.

2. Make the schedule and procedures available to the public, both in written form and telephonically. A live voice or recording shall provide telephone callers the rules and hours for all categories of visitation.
3. Post schedule, procedures and notification of visitation rules and hours in the visitor waiting area in English, Spanish and, where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

## **D. Visitor Logs**

Each facility shall 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, the visit shall be logged in the Legal Visitation Log. Staff shall record in the general visitors’ log:

1. the name and alien-registration number (A-number) of the detainee visited;
2. the visitor’s name and address;
3. the visitor’s relationship to the detainee; and
4. the date, arrival time and departure time.

## **E. Incoming Property and Funds for Detainees**

In accordance with standard “2.5 Funds and Personal Property,” each facility shall have written procedures regarding incoming property and money for detainees.

The facility administrator may permit a visitor to leave cash or a money order with a designated staff member for deposit in a detainee’s account; the staff member must provide the visitor a receipt for all money or property left at the facility. Under no circumstances may visitors give property or money

directly to a detainee.

The shift supervisor must approve all items brought for detainees. The visiting room officer may not accept articles or gifts of any kind for a detainee, unless the facility administrator and/or shift supervisor has approved these items in advance.

Due to the relatively short length of stay and the fact that ICE/ERO provides all necessities, detainees may receive only minimal amounts of personal property, including:

1. small religious items;
2. religious and secular reading material (soft cover);
3. legal documents and papers;
4. pictures: 10 maximum, measuring 5" x 7" or smaller each;
5. prescription glasses;
6. dentures;
7. personal address book or pages;
8. correspondence;
9. wedding rings;
10. telephone calling cards; and
11. other items approved by the facility administrator.

## **F. Sanctions for Violation of Visitation and Contraband Rules**

Any violation of the visitation rules by the detainee may result in disciplinary action against the detainee, including loss of visitation privileges, excluding legal and consular visits. Visiting privileges may be revoked only through the formal detainee disciplinary process. However, the facility administrator has the authority to restrict or suspend a detainee's ordinary visiting privileges temporarily when there is reasonable suspicion that the detainee has acted in a manner constituting a threat to the

safety, security or good order of the facility. Each incident shall be documented, and the restriction or suspension shall be limited to the time required to investigate and complete the disciplinary process. Legal visitation shall be suspended only if necessary to maintain the safety or security of the facility.

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.

Introduction of contraband or other criminal violations may lead to criminal prosecution of a visitor, a detainee or both.

## **G. Dress Codes for Visitors**

If the facility establishes and maintains a dress code for visitors, it shall be made available to the public, e.g., posted on the facility's website, telephone message and included in the detainee handbook.

## **H. Visiting Room Conditions**

The facility's visiting areas shall be appropriately furnished and arranged, and made as comfortable and pleasant as practicable. Also, as practicable, space shall be provided outside of the immediate visiting areas for the secure storage of visitors' coats, handbags and other personal items.

The facility administrator shall provide adequate supervision of all visiting areas, and the visiting area officer shall ensure that all visits are conducted in an orderly and dignified manner.

## **I. Visits by Family and Friends**

### **1. Hours and Time Limits**

Each facility shall establish a visiting schedule based on the detainee population and the demand for visits. Visits shall be permitted during set hours on Saturdays, Sundays and holidays, and to the extent practicable, facilities shall also establish visiting hours on weekdays and during evening hours. The facility shall accommodate the scheduling needs of

visitors for whom scheduled visiting hours pose a hardship, for example, authorizing special visits for family visitors.

To accommodate the volume of visitors within the limits of space and staff resources, and to ensure adequate security, the facility administrator may restrict visits (e.g., some or all detainees and visitors may be limited to visiting on Saturday or on Sunday, but not both days). ICE/ERO does not require a facility to permit every visitor to visit on both days of a weekend, nor to permit every detainee to have visits on both days of a weekend. However, to the extent practicable, ICE/ERO encourages the facility administrator to establish visiting hours for each detainee on both days of the weekend, and to try to accommodate visitors who can only visit on a specific weekend day.

The facility's written rules shall 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 facility administrator may modify visiting periods.

## **2. Persons Allowed to Visit**

Individuals from the following categories shall be permitted to visit, unless they pose a threat to the security and good order of the facility:

- a. Immediate Family: Immediate family may include mothers, fathers, stepparents, foster parents, brothers, sisters, stepbrothers, stepsisters, biological and adopted children, stepchildren, foster children and spouses, including common-law spouses.

Immediate family members detained at the same facility may visit with each other during normal visiting hours, regardless of gender, when practicable.

- b. Minors: Facilities should have provisions to allow for contact or non-contact visitation with minor children, stepchildren and foster children. Facilities that allow visitations by minor children, stepchildren and foster children should try to facilitate contact visitation when possible. Facilities should allow detainees to see their minor children as soon as possible after admission. Generous time allotments for visitation with minor children are recommended.

At facilities where there is no provision for visits by minors, upon request, ICE/ERO shall arrange for a visit by children, stepchildren and foster children within the first 30 days. After that time, upon request, ICE/ERO shall consider a request for transfer, when possible, to a facility that shall allow such visitation. Upon request, ICE/ERO shall continue monthly visits, if transfer is not approved, or until an approved transfer can be effected.

At the supervisor's discretion, a minor without positive identification may be admitted if the accompanying adult visitor vouches for his/her identity. Minors must remain under the direct supervision of an adult visitor so as not to disturb other visitors, and excessively disruptive conduct by minors may result in termination of the visit.

- c. Others may include grandparents, uncles, aunts, in-laws, cousins, nieces, nephews, non-relatives and friends.

## **3. Visitor Identification and Search Procedures**

Staff shall verify each adult visitor's identity before admitting him/her to the facility. No adult visitor may be admitted without government-issued photo identification. All visitors shall be subject to identification and personal search in accordance with standard "2.4 Facility Security and Control."

The facility administrator may establish a procedure for random criminal background and warrant checks for the purpose of ensuring facility safety, security



and good order. Visitors shall not be precluded from visiting a detainee solely because of a past conviction. Facilities can exclude visitors based on an examination of the underlying conduct of the conviction.

Staff shall escort visitors to the visiting room only after completing identification and inspection as provided in the facility's written procedures. All visitors are subject to a personal search, which may include a pat ("pat-down") search as well as a visual inspection of purses, briefcases, packages and other containers. Written procedures shall be publicly available to inform visitors that they are subject to search procedures. Any person who refuses to be searched is prohibited from visiting a detainee.

In each facility, written procedures shall provide for the prevention, cancellation or termination of any visit that appears to pose a threat to safety, security or good order. Visiting area officers or other staff, who believe a situation poses such a threat, shall alert the shift supervisor or equivalent; the supervisor may then prevent, cancel or terminate the visit.

*The inspecting officer may ask the visitor to open a purse, briefcase, package, and other container for visual inspection of its contents. If warranted, the officer may ask the visitor to remove the contents and place them on a table; however, the officer may not place his or her hands inside the container. Facilities shall provide and promote visitors' use of lockers or a secure area provided for safekeeping of personal belongings during visits.*

*Only an officer with the rank of supervisor or above may deny or cancel a visit. In those cases, the officer shall document his or her action in a memorandum sent through official channels to the facility administrator. The visiting room officer, with concurrence from the shift supervisor, may terminate visits involving inappropriate behavior.*

*Facilities shall not require approved visitor lists from ICE/ERO detainees.*

#### **4. Contact Visits**

Written procedures shall detail the limits and conditions of contact visits in facilities that permit them. Ordinarily, within the bounds of propriety, handshaking, embracing and kissing are permitted only at the beginning and end of the visit; however, staff may limit physical contact to minimize opportunities for contraband introduction and to otherwise maintain the orderly operation of the visiting area.

Detainees receiving contact visits shall be given a thorough pat-down search prior to entering the visiting room. Upon exiting, searches of detainees shall be conducted in accordance with facility policy and procedures, which should be reflective of such factors as:

- a. the nature of the facility;
- b. whether the facility houses detainees pending trial for violent or drug-related crimes;
- c. the availability of appropriate screening devices; monitoring technology; and/or
- d. concern for contraband entering the facility.

A facility may only adopt a policy permitting strip searches after contact visits in the absence of reasonable suspicion if detainees have the right to choose non-contact visitation instead. Detainees must be fully informed of that option and the policy generally in a language or manner they understand. The facility must document all strip searches that are performed based on such policy.

#### **5. Visits for Administrative and Disciplinary Segregation Detainees**

While in administrative or disciplinary segregation status, a detainee ordinarily retains visiting privileges.

Segregated detainees may ordinarily use the visiting room during normal visiting hours. However, the facility may restrict or disallow visits for a detainee who violates visiting rules or whose behavior

indicates that he/she may be a threat to the security or good order of the visiting room.

Under no circumstances may detainees be permitted to participate in visitation while in restraints. If the detainee's behavior warrants restraints, the visit may not be granted under general population visiting conditions. Any restriction or denial of visits shall be documented in writing.

Detainees in protective custody, and violent and/or disruptive detainees, shall not use the visitation room during normal visitation hours. In cases in which a visit may present an unreasonable security risk, visits may be disallowed for a particular detainee.

## **J. Visits by Legal Representatives and Legal Assistants**

### **1. General**

In visits referred to as "legal visitation," each detainee may meet privately with current or prospective legal representatives and their legal assistants. Legal visits may not be terminated for routine official counts.

### **2. Hours**

Each facility shall 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.

The facility shall provide notification of the rules and hours for legal visitation as specified above. This information shall be prominently posted in the waiting areas and visiting areas and in the housing units.

On regular business days, legal visitations may proceed through a scheduled meal period, and the detainee shall receive a tray or sack meal after the visit.

In emergency circumstances, facilities may consider

requests from legal representatives for extended visits or visits outside normal facility visiting hours.

### **3. Persons Allowed to Visit**

Subject to the restrictions stated below, individuals in the following categories may visit detainees to discuss legal matters:

- a. Attorneys and Other Legal Representatives: 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.

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.

- b. Legal Assistants: 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 detainee during legal visitation hours. The letter shall state that the named legal assistant is working on behalf of the supervising legal representative for purposes of meeting with the ICE/ERO detainee(s).
- c. Translators and Interpreters: The facility shall permit translators and interpreters to accompany legal representatives and legal assistants on legal visits, subject to "Visitor Identification and Search Procedures" detailed above.
- d. Messengers: The facility shall permit messengers (who are not legal representatives or legal assistants) to deliver documents to and from the facility, but not to visit detainees.

#### **4. Identification of Legal Representatives and Legal Assistants**

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.

Legal representatives and legal assistants shall not be asked to state the legal subject matter of the meeting.

Legal representatives and legal assistants are subject to a non-intrusive search—such as a pat-down 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 Detainee to Be Visited**

While identification by A-number is preferable, a facility may not require legal representatives and assistants to submit a detainee’s A-number as a condition of visiting. Where the legal representative or assistant provides alternative information sufficient to reasonably identify the specific detainee, the facility shall make a good-faith effort to locate a detainee.

#### **6. Call-Ahead Inquiries**

Each facility shall establish a written procedure to allow legal representatives and assistants to telephone the facility in advance of a visit to determine whether a particular individual is detained there. The request must be made to the on-site ICE/ERO staff or, where there is no resident staff, to the ICE/ERO office with jurisdiction over the facility.

#### **7. Pre-Representation Meetings**

During the regular hours for legal visitation, the facility shall permit detainees to meet with prospective legal representatives or legal assistants.

The facility shall document such “prerepresentation meetings” in the logbook for legal visitation.

To meet with a detainee, a legal service provider’s representative need not complete a Form G-28 (stating that he/she is legal representatives of the detainee) at the “pre-representation” stage.

#### **8. Form G-28 and Attorney/Client Meetings**

Attorneys representing detainees on legal matters unrelated to immigration are not required to complete a Form G-28.

Once an attorney-client relationship has been established, or if an attorney-client relationship already exists, the legal representative shall complete and submit a Form G-28, available in the legal visitation reception area. Staff shall collect completed forms and forward them to ICE/ERO.

#### **9. Private Meeting Room and Interruption for Head Counts**

Visits between legal representatives or legal assistants and an individual detainee are confidential and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings.

Officers may terminate legal visits at the end of the allotted time or to maintain security, but not for routine official counts.

Staff shall not be present in the confidential area during the meeting unless the legal representative or legal assistant requests the presence of an officer; however, as long as staff cannot overhear the conversation, staff may observe such meetings visually through a window or camera, to the extent necessary to maintain security.

When a situation arises in which private conference rooms are in use and the attorney wishes to meet in a regular or alternate visiting room, the request shall be accommodated to the extent practicable. Such meetings shall be afforded the greatest possible degree of privacy under the circumstances.



## **10. Materials Provided to Detainees by Legal Representatives**

The facility's written legal visitation procedures must provide for the exchange of documents between a detainee and the legal representative or assistant, even when contact visitation rooms are unavailable.

Documents or other written material provided to a detainee during a visit with a legal representative shall be inspected but not read. Detainees are 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 detainee with his/her property. The detainee shall be permitted access to these documents utilizing the established avenues of communication.

## **11. Administrative and Disciplinary Segregation**

Detainees in administrative or disciplinary segregation shall be allowed legal visitation. If the facility administrator considers special security measures necessary, he/she shall notify the legal service provider of the security concerns prior to the meeting.

## **12. Group Legal Meetings**

Upon request of a legal representative or assistant, the facility administrator may permit a confidential meeting (with no officer present) involving the requester and two or more detainees. This may occur for various purposes (e.g., pre-representational, representational, removal-related). The facility shall grant such requests to the greatest extent practicable, if it has the physical capacity and if the meeting shall not interfere with the safety, security and good order of the facility. Each facility administrator shall limit detainee attendance according to the practical concerns of the facility, or the security concerns associated with the meeting in question.

See also standard "6.4 Legal Rights Group Presentations."

## **13. ICE/ERO-Provided List of Free Legal Service**

## **Providers and Detainee Sign-Up**

ICE/ERO shall provide each facility the official list of local free legal service providers, updated quarterly by the local DOJ Executive Office for Immigration Review. The facility shall promptly and prominently post the current list in detainee housing units and other appropriate areas.

Any legal organization or individual on the current list may write the facility administrator to request the posting and/or general circulation of a sign-up sheet.

The facility administrator shall then notify detainees of the availability of the sign-up sheet and according to established procedures, ensure coordination with the pro bono organization.

## **14. Legal Visitation Log**

Staff shall maintain a separate log to record all legal visitors, including those denied access to the detainee. The log shall include the reason(s) for denying access.

*Log entries shall include the following information:*

- a. date;*
- b. time of arrival;*
- c. visitor's name;*
- d. visitor's address;*
- e. supervising attorney's name (if applicable);*
- f. detainee's name and A-number;*
- g. whether the detainee currently has a G-28 on file;*
- h. time visit began; and*
- i. time visit ended.*

*Staff shall also record any important comments about the visit.*

## **15. Availability of Legal Visitation Policy**

The facility's written legal visitation policy shall be available upon request. The site-specific policy shall specify visitation hours, procedures and standards

and address, at a minimum, the following:

- a. telephone inquiries;
- b. dress code;
- c. legal assistants working under the supervision of an attorney;
- d. pre-representational meetings;
- e. Form G-28 requirements;
- f. identification and search of legal representatives;
- g. identification of visitors;
- h. materials provided to detainees by legal representatives;
- i. confidential group legal meetings; and
- j. detainee sign-up.

## **K. Consultation Visits for Detainees Subject to Expedited Removal**

### **1. General**

Detainees 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 detainee'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.

- a. 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.
- b. The consultation visitation period ends with the issuance of a Notice to Appear and once the detainee is placed in removal proceedings before an immigration judge; however, the detainee retains legal and other visitation privileges in accordance with this standard.

"Consultation visitation" may neither incur

government expense nor unduly delay the removal process.

### **2. Method of Consultation**

Because expedited removal procedures occur within short time frames, each facility shall 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.

Facility staff shall ensure that consultation, whether in person, by telephone or by electronic means, proceed without hindrance. Staff shall be sensitive to individual circumstances when resolving consultation-related issues.

Consultation visitation shall be allowed during legal visitation hours and during general visitation hours. If necessary to meet demand, the facility administrator shall increase consultation visiting hours.

### **3. Persons Allowed to Visit for Consultation Purposes**

Detainees subject to expedited removal may consult whomever they choose, in person, by phone or by other electronic means, at any time during the first 48 hours of detention. Consultants might include, but are not limited to, attorneys and other legal representatives, prospective legal representatives, legal assistants, members of non-governmental organizations (NGOs) and 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, the facility administrator shall arrange for consultation by telephone or other electronic means. If security reasons also preclude consultation by telephone or other electronic means, the facility administrator, through the Field Office Director, shall consult the respective ICE Office of Chief Counsel.

#### 4. Privacy

Consultation visits, whether in person, by telephone or other electronic means, shall receive the same privacy as communications between legal representatives and detainees.

#### 5. Admittance for Asylum Officer Interview

Detainees subject to expedited removal may bring and consult advisors during the asylum officer interview. The presence of persons to consult is also allowed during the Immigration Judge's review of a negative credible fear determination, at the judge's discretion.

#### 6. Log

Staff shall 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 stipulation applies even if the visitor is an attorney or legal representative.

#### 8. Other Considerations for Consultation Visits

The above procedures for "Visits by Legal Representatives and Legal Assistants" apply to other considerations in regard to consultation visits such as the following:

- a. group consultations;
- b. call-ahead inquiries;
- c. searches;
- d. detainee identification;
- e. materials provided to detainees by the visitor;
- f. consultation visits for detainees in administrative and disciplinary segregation;
- g. pro-bono list and detainee sign-up; and
- h. availability of consultation visitation policy.

#### L. Consular Visitation

According to international agreements and under regulation 8 C.F.R. § 236.1, detainees must be advised of their right to consular access and ICE/ERO shall facilitate the detainee's access to consular officers. ICE/ERO policy and practice stipulate that all detained individuals be provided with notice, through the facility administrator, of their right to contact their consular representative(s) and receive visits from their consulate officer(s).

The facility administrator shall ensure that all detainees 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 facility administrator's prior authorization.

To conduct such visits, consular officers must present Department of State-issued identification.

#### M. Visits from Representatives of Community Service Organizations

The facility administrator may approve visits to one or more detainees by individuals or groups representing community service organizations, including civic, religious, cultural, therapeutic and other groups. Volunteers may provide a special religious, educational, therapeutic or recreational activity.

The facility administrator's approval shall take into account such factors as:

1. safety and security considerations;
2. availability of detention personnel to supervise the activity; and
3. sufficient advance notification to the facility administrator.

*Detainees' immediate family and other relatives, friends and associates, as detailed above under*