

Foreword

INTRODUCTION

U.S. Immigration and Customs Enforcement (ICE) is a federal agency charged with enforcing the nation's immigration laws in a fair and effective manner. ICE identifies, apprehends, detains, and removes individuals who are amenable to removal from the United States. ICE uses its immigration detention authority to effectuate this mission by securing individuals in custody while they await the outcome of their immigration proceedings and/or removal from the United States. ICE has important obligations under the U.S. Constitution and other federal and state law when it decides to keep an individual in custody. ICE detention standards ensure that detainees are treated humanely; protected from harm; provided appropriate medical and mental health care; and receive the rights and protections to which they are entitled.

This revision of ICE's National Detention Standards (NDS) reflects the agency's ongoing commitment to working with its state and local partners to enforce immigration laws and improve public safety and national security. These standards have been updated to better reflect the strong relationship ICE has with its law enforcement partners, including where detention facilities successfully manage their own populations and are willing to assist ICE with housing immigration detainees.

BACKGROUND

The original NDS were issued in 2000 by the U.S. Department of Justice (DOJ) Immigration and Naturalization Service (INS), ICE's predecessor agency. The NDS established consistent conditions of confinement, program operations, and management expectations within the agency's detention system. Over the past 17 years, much has changed in immigration enforcement, including the growth of a network of dedicated immigration detention facilities, which are now largely covered by a separate set of standards – the Performance Based National Detention Standards (PBNDS). However, due to the scope of immigration enforcement and the importance of collaboration with local law enforcement agencies, ICE must continue to rely on state and local facilities to house its detainees. This updated version of the NDS, designed for non-dedicated facilities, streamlines many of the original requirements and provides additional requirements to account for important changes in relevant law, policy, and practice similar to the PBNDS.

Specific Areas of Change

ICE is confident in the ability of its state and local partners to lawfully, safely, and humanely manage detainees in a correctional setting. This is reflected in the updates to this version of the NDS. The revised NDS eliminate or greatly reduce a number of prior standards based on ICE's experience with local law enforcement partners and the understanding that local practice appropriately covers these requirements. Eliminated or condensed standards include: Emergency Plans; Marriage Requests; Non-Medical Emergency Escorted Trips; Contraband; Population Counts; Key and Lock Control; and Tool Control. Many standards have also been streamlined, including: Food Service; Environmental Health and Safety; Security Inspections; and Voluntary Work Program. Two prior NDS standards regarding Administrative and Disciplinary Special

Management Units were condensed into one standard. Descriptions of ICE’s responsibilities and commitments to its detainees have been removed throughout.

These updated, streamlined NDS focus on ICE’s essential requirements, encourage greater communication between facilities and their local ICE Enforcement and Removal Operations (ERO) Field Offices, and provide a comprehensive list of circumstances in which such communication is required. Three new standards have been added: Searches of Detainees; Sexual Abuse and Assault Prevention and Intervention; and Disability Identification, Assessment, and Accommodation. Three appendices have also been included: Appendix A: List of Required Staff Training; Appendix B: ICE Reporting Requirements; and Appendix C: Contents of the Local Supplement; Appendix D: Definitions. Additional details on specific areas of change are described below.

Sexual Abuse and Assault Prevention and Intervention

Pursuant to DHS Final Rule, 6 CFR Part 115, *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities* (Mar. 7, 2014), also known as the DHS Prison Rape Elimination Act (PREA) Standards, ICE detention facilities must adhere to a zero-tolerance policy for all forms of sexual abuse and assault. The additions to the NDS in this area cover policies and procedures to appropriately prevent, detect, and respond to, as well as to report and investigate, allegations of sexual abuse or assault.

Disability Identification, Assessment, and Accommodation

Pursuant to Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, their implementing federal regulations, and other applicable federal and state law, facilities are obligated to provide detainees with disabilities with accommodations, auxiliary aids, and modifications to policies, practices, and/or procedures to allow them an equal opportunity to access, participate in, or benefit from detention programs, services, and activities. Federal and state law also require that facilities 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, sign language interpreters, videophones, telephones compatible with hearing aids, telecommunications devices (TTYs), and note-takers, as needed. As laid out in the new detention Standard 4.7, “Disability Identification, Assessment, and Accommodation,” facilities must consider and respond to detainees’ formal and informal requests for disability-related aids, modifications, and accommodations. ICE can assist facilities in procuring disability-related services, aids, and accommodations.

Language Access

Pursuant to Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” (Aug. 2000), and Title VI of the Civil Rights Act of 1964, facilities are required to identify detainees with limited English proficiency (LEP) (i.e., detainees who do not speak English as their primary language and who have limited ability to read, speak, write, or understand English) and provide LEP detainees with meaningful access to their programs and activities through language interpretation and translation services. The facilities’ obligation to provide meaningful access to LEP detainees extends to all aspects of detention, including but not

limited to intake, disciplinary proceedings, placement in segregation, sexual abuse and assault prevention and intervention, staff-detainee communication, mental health, and medical care. Meaningful access may be accomplished through professional in-person or telephonic interpretation and translation services or bilingual personnel. Except in emergencies, other detainees should not be used as interpreters or translators.

Generally, all written materials provided to detainees must be translated into Spanish and other frequently encountered languages. Oral interpretation or other language assistance must be provided to any detainee who speaks a language in which written material has not been translated or who is illiterate.

Areas where language access is particularly important have been included with specific provisions throughout the updated NDS. ICE can assist the facilities with language services (by providing contact and other necessary information) so that the facility can secure interpretation and translation services at no additional cost. ICE will also supply the facility with Spanish translations of frequently used ICE forms. Where necessary, ICE can assist the facility in obtaining translations of pertinent materials and forms in other languages.