
ABA Civil Immigration Detention Standards



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Delegates through the adoption of Resolution 111.

ABA Civil Immigration Detention Standards



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The ABA Commission on Immigration developed the Civil Immigration Detention Standards to build on the ABA's longstanding leadership in increasing access to justice and humane treatment for men and women in immigration detention. The Commission directs ABA efforts to ensure fair and unbiased treatment and full due process rights for immigrants and refugees within the United States. The Commission and its dedicated staff members carry out this mission by advocating for appropriate reform; providing education and training; and operating pro bono projects in South Texas, Seattle, and San Diego that provide direct legal services to individuals in need.

The Department of Homeland Security's existing detention standards originated through a process of collaboration between the ABA, the Department of Justice (DOJ), and DOJ's former Immigration and Naturalization Service (INS); they have been updated several times since they were originally issued in 2000. The ABA Civil Immigration Detention Standards were developed to provide the Department of Homeland Security with a guide for transitioning to a civil detention system that befits its civil detention authority. The civil standards arise, in part, from the ABA's extensive advocacy, monitoring, and reporting on immigration detention, as well as its direct work with men and women in detention.

The civil standards were developed with the assistance of an expert Advisory Task Force that included a former Commissioner of the INS, the Commissioner of the New York City Department of Correction, and experts from the corrections, medical, academic, and other fields. The Commission is very grateful for the generous contributions of these experts and others who reviewed and commented on drafts of the standards. The Commission is especially grateful to Advisory Task Force Chair Donald Kerwin for his able leadership in coordinating the work of the Advisory Task Force.

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The Standards were adopted by the ABA House of Delegates in August 2012, with the cosponsorship of many ABA sections and committees, an ABA affiliated organization, and several local bar associations, including: the Section of Administrative Law and Regulatory Practice; the Criminal Justice Section; the Section of International Law; the Judicial Division; the Standing Committee on Legal Aid & Indigent Defendants; the Young Lawyers Division; the Atlanta Bar Association; the New York City Bar Association; the Bar Association of San Francisco; the Santa Clara County Bar Association; and the American Immigration Lawyers Association; and support from the Section of Litigation; the Family Law Section; and the Dade County Bar Association.

TABLE OF CONTENTS

Acknowledgments.....	vii
Table of Contents.....	ix
Introduction.....	1
II. Guiding Principles.....	3
III. Classification and Placement Process	7
IV. Physical Plant and Environment.....	11
V. Daily Living Conditions	13
VI. Communications	21
VII. Access to Legal Services.....	25
VIII. Access to Health Care Services.....	31
IX. Access to Religious Services.....	33
X. Visitation	37
XI. Administration and Staffing	41
XII. Personal Security and Management of Residents.....	45
XIII. Administrative and Disciplinary Separation	51
XIV. Grievances.....	61
XV. Accountability and Oversight.....	63
Glossary of Terms.....	67

INTRODUCTION

The immigration detention and removal system is, by law, a civil system. The persons within this system are not awaiting criminal trials or serving prison sentences. Rather, most are in removal (deportation) proceedings that are presided over by immigration judges from the Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR). Others have not yet been placed in removal proceedings; or have been ordered removed and are awaiting removal from the nation; or will never be placed in formal removal proceedings because they are subject to administrative removal by the U.S. Department of Homeland Security (DHS). The detention of immigrants serves to ensure court appearances and effect removal. It is not intended to serve a punitive purpose. By law, DHS must detain broad categories of noncitizens, and it has the discretion to detain all others in removal proceedings. A substantial percentage of persons in its custody do not have criminal records, and only a small percentage have criminal records based on violent conduct or pose a national security threat.

Despite DHS's civil legal authority, the management of the U.S. immigration detention system is based on a criminal detention model. Most persons in DHS custody — both those held by Immigration and Customs Enforcement (ICE) and the shorter-term detainees held by Customs and Border Protection (CBP) — are housed in jails and jail-like facilities, which are mostly administered according to American Correctional Association (ACA)-based standards that apply to persons awaiting criminal trials.

DHS/ICE has recently made it a priority to transform the immigration detention system from a criminal model into one that reflects its civil detention authority. The American Bar Association (ABA) Civil Immigration Detention Standards set forth below are intended to provide a tool that will guide DHS in the transition to a comprehensive civil detention system that does not primarily make use of jails and jail-like facilities to house the persons in its custody. Although the ABA recognizes the logistical and financial challenges involved in the

expeditious and complete transformation to a civil detention system, it nonetheless urges DHS to adopt these standards quickly and to begin to reconstitute its infrastructure and reform its system based upon these standards.

In 2008, DHS/ICE released extensive performance-based national detention standards (PBNDS) based on ACA standards for pre-trial detention. In February 2012, ICE released its revised PBNDS 2011, which continue to be based on ACA standards for pre-trial detention. In addition, DHS/ICE has developed civil detention principles (not standards), which have been incorporated into its statements of objectives (SOOs) used in soliciting bids for select new detention facilities.

The ABA civil immigration detention standards are not intended to be an exhaustive compilation of all the standards that might apply to persons subject to DHS custody. Rather, they are intended to provide DHS with a blueprint for developing civil detention standards, particularly those that implicate access to justice and other ABA priorities. The ABA standards are intended to assist DHS/ICE in its “real time” efforts to reform the U.S. immigration detention system. The ABA standards should be used by DHS/ICE to update the PBNDS and to guide its comprehensive transition to a civil detention system.

The ABA standards are meant to apply to persons subject to DHS custody, while recognizing the need to take more restrictive measures for the limited percentage of residents who may represent a danger to others or to themselves. The ABA offers these standards in order to minimize the risk of civil and human rights violations against immigration detainees. Facilities that do not meet the standards should not house DHS detainees.

II. GUIDING PRINCIPLES

The principles below should guide DHS/ICE's development of civil detention standards, and underlie the non-exhaustive list of ABA standards that follow:

- A. The ABA civil immigration detention standards should exceed the constitutional protections guaranteed to other populations in custody, and should not be interpreted, in any particular, to provide less generous standards or protections than those set forth in the detailed DHS/ICE PBNDS and other standards set forth in the laws, regulations and sections of model standards referenced in this document. The ABA civil immigration detention standards incorporate by reference the following, with supplemental provisions incorporated by reference within the standards:
 - 1. Part VI of the ABA Standards on the Treatment of Prisoners, which addresses health care.
 - 2. Part X of the ABA Standards on the Treatment of Prisoners, which addresses facility administration and staffing.
 - 3. ICE's PBNDS 2011 Terminal Illness, Advance Directives and Death standard.
 - 4. 28 C.F.R. § 115, which implements the Prison Rape Elimination Act of 2003 (PREA), P.L. 108-79, codified at 42 U.S.C. §§ 15601-15609.
- B. The ABA civil immigration detention standards should apply to all residents in DHS custody, with the recognition that it will be necessary to classify residents based on the risk they present to others and to take more restrictive measures for persons (subject to appropriate procedural protections) who may represent a present danger to others or to themselves.

- C. Any restrictions or conditions placed on noncitizens — residents or others — to ensure their appearance in immigration court or their actual removal should be the least restrictive, non-punitive means necessary to further these goals, and decisions to continue to detain should be regularly revisited.¹
- D. Residents should not be held in jails or jail-like settings. DHS/ICE should normalize living conditions in all detention facilities to the greatest extent possible. Civil detention facilities might be closely analogized to “secure” nursing homes, residential treatment facilities, domestic violence shelters, or in-patient psychiatric treatment facilities. Such facilities should have ample common space, freedom to move within the facility, extended access to indoor and outdoor recreation, and abundant opportunities to relate to other residents and to persons outside the facility. The level of security should be commensurate with propensity to institutional violence and any security or safety concerns related to the residents in individual facilities.
- E. Access to legal services is critical to a fair and efficient immigration removal and detention system. Authorities should facilitate access to legal and consular services, legal materials and information, correspondence, and legal orientation presentations.
- F. Facilities should allow for residents to seek and receive legal advice and medical and psycho-social care; conduct legal research and otherwise participate in the preparation of their cases; wash and wear their own clothes; and practice their faith(s).
- G. A noncitizen should only be detained based upon an objective determination that he or she presents a threat to national security or public safety or a substantial flight risk that cannot be mitigated through parole, bond, or a less restrictive form of custody or supervision. As a general rule, minors and pregnant or nursing women should not be detained by DHS/ICE. References to these groups in the standards should not be interpreted to mean otherwise.

¹ The continuum of strategies and programs used to achieve these core goals should range from release on recognizance or parole, to release on bond, to community-based supervised release programs, to “alternative to detention” programs with various levels of supervision, to home detention (with strict conditions) that represent an alternative “form” of detention, to detention in civil detention facilities.

- H. DHS/ICE should vigorously oversee its contractors and its own staff, and should bear ultimate responsibility for ensuring adherence to these standards, for safeguarding and protecting the rights of all residents, and for decisions related to release, classification, and detention of persons subject to its jurisdiction.
- I. All facilities in which persons are detained should be subject to direct review and oversight by DHS. In addition, independent observers should be permitted to monitor conditions in facilities, to assess compliance with these standards, and to issue public reports with findings and recommendations.
- J. Facilities should respect the rights and dignity of all residents. No resident should be subject to cruel, inhuman, or degrading treatment or conditions.
- K. Congress should enact legislation to implement and fund compliance with these standards.

III. CLASSIFICATION AND PLACEMENT PROCESS

A. Least Restrictive Alternative

1. The intake, classification, and placement process should be used by DHS/ICE to determine whether a noncitizen should be released, placed in an alternative-to-detention (ATD) program or detained.
2. These standards presume use of the least restrictive means available to prevent flight and otherwise to meet the limited underlying purpose of detention.

B. Classification and Placement

1. If detention is necessary, DHS/ICE should consider all of the resident's relevant circumstances, risks, and needs, including but not limited to the following, in determining custody classification and detention location:
 - a. Location of the resident's family, social and cultural support systems, and legal counsel;
 - b. Prior criminal history and demonstrated propensity for institutional violence, risk of flight, and security needs;
 - c. Medical requirements, mental health needs, and handicapping conditions;
 - d. Other special conditions or vulnerabilities, e.g., if a resident is pregnant or has custody of minor children; and
 - e. Availability of special programming.
2. The classification process should be systematized and should be validated by experts independent of DHS.

- a. Assessment of residents for placement within the system should be performed prior to assigning the resident to a specific facility.
 - b. The assessment should be reviewed by facility staff within 24 hours of the resident's arrival at the receiving facility.
 - c. Whenever it is determined that the placement is inappropriate, DHS/ICE should be notified immediately and should place the resident in a more appropriate facility.
3. DHS/ICE should rate and classify all facilities used to house those in its custody based on their appropriateness and ability to accommodate residents of different classifications. Facilities should be rated according to their suitability to house persons with different security and safety classifications, medical and mental health needs, and other relevant factors like age and gender.
 4. Noncitizens should not be presumed to be dangerous or prone to flight in the absence of credible information establishing objective risk factors.

C. Facility Intake Process

1. The intake process should include an initial medical, dental, and mental health screening that occurs prior to placement of the resident in a detention facility, and in no event more than 12 hours after arrival. This screening should be performed by a qualified medical professional.
2. Each resident should receive a comprehensive medical and mental health evaluation by qualified professionals no later than 14 days after admission to a facility, and a thorough medical and mental health assessment periodically thereafter, in accord with community health standards. Unless a dental emergency requires more immediate attention, an examination by a dentist or trained personnel directed by a dentist should be conducted within 90 days of admission.
3. All facilities should follow a uniform, validated protocol for screening and assessing residents that is designed to identify any issues requiring immediate or special attention, such as

- a. Any physical illness, substance withdrawal, or communicable or chronic disease that could require medical treatment;
 - b. Any mental health conditions that require treatment, make the resident a risk to himself or herself or to others, or make the resident especially vulnerable in a detention setting.
4. Should a screening or assessment indicate that fuller medical or mental health evaluation is required, such evaluation should be conducted in a facility that can provide comprehensive medical and mental health services.
 5. Upon arrival at the facility, residents should be provided with a DHS/ICE Handbook and a facility-specific handbook that describe rules and procedures as well as resident rights under these standards, each in a language the resident understands. In-person assistance should be provided to persons who are illiterate or have disabilities. In addition to written materials, residents should be instructed on key points in the handbooks in a language they can understand.

D. Review of Placements

1. In addition to assessing individuals in the initial intake process, DHS/ICE should regularly review its placement and classification decisions to ensure that residents are
 - a. Detained for the minimum time necessary;
 - b. Not detained indefinitely;
 - c. Reclassified and, if appropriate, transferred to another kind of facility; and
 - d. Released if detention is no longer appropriate.
2. The initial review of a resident's classification and placement should be performed no more than four weeks after a resident has entered a facility. An earlier review of classification and placement should be triggered by factors including a change in flight risk (such as eligibility for relief, attainment of legal

counsel, or ability to post bond) or a change in risk of harm to the resident due to classification and placement.

3. Whenever it is determined that the placement is no longer appropriate, DHS/ICE should be notified immediately and should place the resident in a more appropriate facility.

IV. PHYSICAL PLANT AND ENVIRONMENT

A. Location of Facilities

Facilities should be located near the following:

1. Medical facilities capable of providing primary and secondary medical treatment;
2. The resident's family, social and cultural support systems;
3. A transportation hub; and
4. Adequate non-profit, pro bono, or low-cost legal services.

B. Physical Plant

The physical plant of a facility should:

1. Be clean and well maintained.
2. Be equipped with appropriate heating, air conditioning, and ventilation systems: residents at risk of heat-related illness or harm should be provided necessary access to cooled environments during heat emergencies;
3. Allow for privacy, freedom of movement, and access to outdoor recreation;
4. Be constructed and maintained so as to minimize noise to residents and maximize access to natural light;
5. Be smoke-free and compliant with the Americans With Disabilities Act;
6. Be regularly inspected to ensure compliance with all relevant health, safety, and building codes;

7. Include sufficient and appropriate space to support the programs and services referenced in these standards; and
8. Be secured by controlled access and perimeter walls if necessary, but not by traditional prison-like towers, fences, or barbed or concertina wire. A more secure perimeter may be necessary for facilities or portions of facilities that detain populations classified as having a propensity for institutional violence or otherwise presenting a security or safety risk.

V. DAILY LIVING CONDITIONS

Each facility should provide private, safe, secure and sanitary facilities to residents.

A. Privacy, Personal Possessions, and Physical Space

1. The physical dimensions of residential quarters should be adequate to ensure compliance with fire and safety codes.
2. Facilities should provide each resident with access to:
 - a. A bed and mattress raised off the floor;
 - b. Blankets and fans, as appropriate;
 - c. Sufficient storage with a lock controlled by the resident to afford access to personal possessions in the living area;
 - d. Private showers and toilets, where practicable and appropriate, based on security levels;²
 - e. Adequate light and control over lighting, i.e., residents should be able to turn on a light in their sleeping quarters at will and turn off lights that might impede sleep;³ and
 - f. Abundant natural light and views of the outdoors.
3. An inventory of personal property should be provided at intake and a copy of the inventory should be provided to the resident. Additionally, the resident should be provided with copies of identity documents, including passports. Otherwise lawful contraband that is taken from a resident should be stored securely and immediately returned upon transfer

² Modifications or accommodations for vulnerable populations, as defined in the glossary, may be warranted where appropriate.

³ This standard should not be construed to preclude appropriate security precautions such as night lights to facilitate safety.

or release. Residents should be permitted to retain in their possession non-contraband personal property.

4. Residents should have access to copies of all materials required for legal proceedings, including passports and other official documents, held by DHS/ICE.
5. Facility staff should provide storage for medications or special dietary needs, and should monitor compliance with prescription and other medication regimens. There should be a presumption that residents are permitted to keep their medications in their possession.
6. Residents should be allowed to wear their own clothing and should not be subject to clothing restrictions apart from those deemed strictly necessary for security.
7. If the resident does not have clean or adequate clothing, the facility should provide him or her with clean, gender-appropriate, well-fitting civilian clothing and underwear, in good condition, with some variety (i.e., not uniforms) and suited to the season and to the facility temperature.
8. Residents should be afforded uninterrupted quiet time after a certain hour.
9. Facility staff should not conduct more than three headcounts of residents per day, except where warranted for special populations such as violent, mentally ill, or elderly residents or in extraordinary circumstances. Headcounts should be organized as check-ins and should not involve a lock-down of all residents in their sleeping quarters.
10. Residents should be afforded access to their personal funds and banking services, as appropriate.

B. Communal Space

1. Communal areas should be reasonably accessible for most of each day, although there may be additional restrictions on access to dining areas and libraries.

2. Areas designated for dining should be separate from areas designated for sleeping.
3. Non-private “living” areas should provide space for activities that are communal (e.g., television viewing) as well as “quiet” (e.g., reading). “Quiet” areas should be measured by decibels to ensure that the area is indeed quiet.
4. Sufficient private space should be set aside for the provision of services that cannot or will not be provided off-site, including medical and counseling services.
5. There should be substantial outdoor space for recreation, with grass unless the climate makes it impossible, and shelter from sun or rain, including for aerobic activities and organized events, as well as indoor recreation space for use in the event of inclement weather.
6. There should be fair and equal access to all communal space.
7. Space should be sufficient to meet the needs of all residents.
8. A fair process should be established to allow residents, on an equal basis, to reserve limited space or resources.
9. The facility should provide access to a commissary so that residents can purchase non-essential items — including certain food and clothing — at a reasonable price that is competitive with prices in local stores.
10. Residents should be able to work for compensation.
11. Residents should be permitted to order items through the mail, subject to screening for contraband and safety purposes.
12. Toilets and common areas should be cleaned on a regular and frequent schedule, and as necessary.

C. Food Service

1. Residents should be provided adequate and nutritionally balanced diets.

- a. Diets should be reviewed at least quarterly by food service personnel and at least annually by a qualified dietician.
 - b. Diets should meet U.S. recommended daily allowances as certified by a qualified dietician.
 - c. Residents should be served three meals every day, at least two of which should be hot meals.
 - d. The dining schedule should provide for no more than 14 hours between the evening meal and breakfast.
 - e. Clean drinking water should be available at all times.
 - f. The diverse nutritional needs of residents of different ages, levels of activity, physical condition, gender, religious affiliation, and medical needs (including pregnant women and nursing mothers) should be met.
 - g. The facility should accommodate the ethnic and religious diversity of the facility's population when preparing menus.
2. Residents, staff and others should be protected from harm by the application of sound security practices in all aspects of food service and dining room operations.
 3. Residents, staff and others should be protected from injury and illness by adequate food service training and the application of sound safety and sanitation practices in all aspects of food service and dining room operations.
 4. Food should be served at appropriate temperatures.
 5. Food service areas should be clean and well lighted.
 6. Dining room facilities and operating procedures should provide sufficient space and time for residents to eat meals in a relatively relaxed, unregimented atmosphere.
 - a. The table arrangements should provide for unassigned seating and ease of movement.

- b. The dining room should have the capacity to permit each resident a minimum of 40 minutes dining time for lunch and dinner, and 30 minutes for breakfast.
 - c. Residents should retain sufficient access to dining room facilities outside of regular meal times to enable cleaning and/or disposal of food-related items consumed outside of dining areas.
7. Food service facilities and equipment should meet established governmental health and safety codes, as documented by relevant agencies and experts independent of DHS.
 8. Food service areas should be continuously inspected by food service staff and other assigned personnel in accordance with established health and safety guidelines.
 9. Therapeutic medical diets and supplemental food should be provided as prescribed by appropriate medical personnel at no cost to the residents.
 10. Special diets and ceremonial meals should be provided at no cost to the residents for residents whose religious beliefs require adherence to religious dietary laws.
 11. Where practicable, the facility should permit the private storage of food for religious or medical needs, and should permit residents to prepare meals for special cultural and religious occasions.
 12. Food should never be used for reward or punishment.
 13. The food service areas should be subject to regular inspection by independent and licensed entities.

D. Freedom of Movement and Recreation

1. Residents should be permitted the maximum amount of freedom of movement within the facility, both indoors and outdoors, consistent with the safety and security of residents and staff.
 - a. Except where necessary to ensure safety and security, residents should be able to move freely and without

- escort during daylight hours within and between the areas designated for housing and recreation.
- b. Reasonable access should be afforded to general reading and law libraries in accordance with Standard VII. Access to Legal Services.
 - c. Access to medical facilities and medical treatment should be available upon request in accordance with Standard VIII. Access to Health Care Services.
 - d. Restraints should not be applied to residents when medically contraindicated, including during labor and postpartum.
2. Residents should be permitted extended access to indoor and outdoor recreational and exercise activities on a daily basis.
- a. Indoor recreational space should permit aerobic activities and games such as table tennis and other organized events.
 - b. The outdoor recreation area should be located outside a building, and should include grass, shade and shelter from rain, sitting areas, exercise equipment, and space for sports. Exercise equipment should be maintained in a safe condition.
 - c. Residents should have free access to outdoor recreation throughout the day, weather permitting.
 - d. Residents participating in outdoor recreational activities should have access to drinking water and toilet facilities.
 - e. All residents, including residents in administrative or disciplinary separation, should have access to outdoor and indoor recreation.
 - f. Common rooms should offer and be large enough to accommodate board games, television, and opportunities for residents to engage in independent and small-group recreational activities.

- g. Facilities should provide residents with opportunities to access programmatic activities consistent with their length of stay. Residents in custody for 14 days or more should be able to access educational, skills-development, English language, programs required for compliance with court orders or family reunification case plans, and other programs.
- h. Facility staff should provide monitoring of the recreational areas to the extent necessary to ensure the residents' safety.
- i. Access to outdoor recreation should not be denied as a disciplinary measure.

VI. COMMUNICATIONS

A. Correspondence and Other Mail

1. Residents should be permitted to correspond with families, friends, legal personnel, the news media, and U.S. and foreign government and consular officials.
2. The amount and content of correspondence that residents send at their own expense should not be limited, except to protect public and facility safety and security.
3. The facility should provide writing paper, writing implements, and envelopes at no cost to the residents.
4. Indigent residents should receive
 - a. A postage allowance for personal correspondence; and
 - b. Necessary postage for special or legal correspondence.
5. The facility should provide a postage allowance to all residents if the facility does not have a system for residents to purchase stamps.
6. Incoming and outgoing mail, except for special or legal correspondence, should be opened by facility staff only for purposes of inspection for contraband.
7. Incoming and outgoing mail, except for special or legal correspondence, should be read or withheld by staff only with the permission of the director of the facility and as necessary to protect public and facility safety and security. Residents should be promptly notified in writing when mail is withheld in whole or in part. The facility should provide a process by which a resident may appeal to federal officials a decision by the facility to withhold mail.

8. Special or legal correspondence should be opened by facility staff only in the presence of the resident, and should not be read by facility staff.
9. Residents should be permitted to receive packages, including items ordered through the mail, except as necessary to protect safety and security. Facility staff should open packages only for purposes of inspection for contraband.
10. The facility should process incoming and outgoing mail as expeditiously as possible, and in no event less than once per day.
11. Legal personnel should be permitted to deliver documents to residents other than by regular mail in accordance with Standard VII.C.2.

B. Telephonic and Other Real-Time Communications

1. This subsection applies to telephones and non-telephonic forms of real-time communication, such as videoconferencing and e-mail.
2. Residents should have reasonable and equitable access to modestly priced telephone services. Charges imposed for phone use should be competitive with rates charged to the public.
3. Residents with hearing or speech disabilities should be accommodated in order to permit reasonable access to telephone services, e.g., with a TTY device or accessible telephone. Residents with speech or hearing disabilities should be permitted extra time for calls.
4. Residents should be able to make no-cost calls and send e-mail (if the receiving entity allows), and receive e-mail from the following as necessary:
 - a. The EOIR (including the BIA), and immigration courts;
 - b. Federal, state, and family courts in which the resident is or may become involved in a legal proceeding (including proceedings involving parental rights);

- c. Legal representatives and personnel;
 - d. Embassy and consular officials;
 - e. DHS Office of Inspector General (OIG);
 - f. The UNHCR for asylum-seekers and stateless residents;
 - g. Federal, state, and local government offices to obtain documents relevant to the resident's immigration case or documents necessary to comply with court orders or arrangements for their children;
 - h. Family members or other individuals assisting with the resident's immigration proceedings;
 - i. Immediate family or others in personal or family emergencies or where a compelling need arises; and
 - j. DHS, including its Joint Intake Center and the ICE Public Advocate.
5. Residents should have access to telephone services for a minimum of 30 minutes per resident per day, at reasonable and appropriate times, including during regular business hours as necessary. Residents with speech or hearing disabilities should be provided with sufficient extra time to use the telephone. In addition to this 30-minute minimum, residents should also be permitted to make calls to and receive calls from legal counsel without time restriction, unless such restriction is deemed necessary for reasons of heightened security.
6. Indigent residents should be provided with a telephone allowance for calls to persons other than those identified in Standard VI.B.4.
7. Telephones should be located in convenient and private areas sufficiently distanced from television and other activities that might be distracting.
8. Telephone calls should be presumptively private and should be monitored or recorded only as necessary to assure safety and security. Telephone calls with legal representatives and

personnel should be treated as confidential and should not be monitored or recorded, and should otherwise be subject to the provisions in Standards VII and XV, relating to communications with legal personnel and confidential communications with external monitoring agencies.

9. Residents should be informed as part of a comprehensive orientation and shown (thereafter) in-person how to request private areas for telephone calls and other confidential communications with legal representatives, caseworkers, or family courts.
10. Telephones should be maintained in good working order. Facility staff should inspect the telephones daily, promptly report out-of-order telephones to the repair service, and ensure that repairs are completed quickly. Out-of-order telephones should not excuse the facility from providing telephone access required by other provisions of these Standards.
11. Residents who are held separately from others should not be denied access to telephone services.
12. Residents should have access to the internet for at least one hour every three days, with sufficient, additional time for legal research, and should have access to e-mail in order to communicate with legal personnel and their families, subject to reasonable security-related restrictions and limitations. The confidentiality of legal communications should be respected.
13. Residents should have access to a telephone and corresponding telephone number, where they can receive incoming calls from criminal or family courts in order to comply with required telephonic appearances.
14. Residents should have easy access to notaries public. A notary should be available to residents every day.

VII. ACCESS TO LEGAL SERVICES

A. Access to Legal Services

1. Residents should be able to meet with current or prospective legal representatives and other legal personnel, court personnel, witnesses, translators, family members and others who can assist them in the preparation of their cases (including the UNHCR), and embassy and consular officials.
2. Residents should also have access to the legal system including access to criminal, family, and juvenile courts; parole and probation hearings; and administrative processes and proceedings in which they have an interest.
3. No resident with legal representation should be unwillingly transferred to another facility except in extremely limited circumstances related to the security, safety, health or well-being of the resident, other residents, or facility staff. DHS/ICE should document the necessity for the transfer beforehand and provide concurrent notice of the reassignment to the attorney of record. Such notice should include contact information for resident at the new facility, as well as description of the mode of transfer (e.g., bus, airplane, etc.) and expected time of arrival.
4. There should be meaningful and timely access to legal personnel, including but not limited to the following:
 - a. Legal personnel should have the ability to visit, call via phone or web- or videoconference, or communicate electronically with residents at a minimum of 12 hours a day, including in the evening and on weekends. Residents should be notified of the hours and rules for legal visitation; and information should be posted in the waiting areas, visiting areas, and housing areas. Facility

staff should consider requests for legal visitation outside of normal hours.

- b. Legal counsel should not be required to provide advance notice of meetings, and any restrictions on advance notice for meetings should be minimal and based solely on maintaining facility security. The time between the arrival at the facility of a legal representative or translator and a scheduled meeting with a resident should not exceed 30 minutes.
 - c. Sufficient private rooms should be set aside (including on short notice) to accommodate private communications, including video and telephonic communications between residents and legal personnel. These meeting rooms should allow legal counsel to review written documents with resident clients, and should not include Plexiglas or other barriers separating legal counsel from the residents, except in extraordinary cases involving safety risks.
 - d. Meetings should take place in a setting where conversation cannot be overheard or recorded by staff or other residents. Facility staff should not be present in the confidential area during the meeting unless legal personnel so request. In such cases, the meeting should be afforded the greatest degree of privacy possible, including through visual but not auditory monitoring.
 - e. Post-meeting searches may take place according to the provisions in Standard X. Visitation.
5. Legal personnel should be permitted to take laptops and smartphones into the courtroom and to visits with clients. The facility may opt to provide its own equipment to legal representatives upon an individualized determination of risk.
 6. Facilities should house or be located near immigration courtrooms to the greatest extent possible in order to allow in-person court hearings. In no event should videoconferencing should be used for merits hearings. Facilities should provide transportation to residents to allow for in-person merits hearings at the relevant immigration court.

- a. If the facility houses a courtroom, it should comply with requirements set forth by EOIR, and should enable residents to have private hearings outside the presence of other residents.
7. Residents should have no-cost access to telephones, e-mail and video technology in order to communicate with legal representatives, according to the provisions under this section and Standard VI.B Telephonic and Other Real-Time Communications. Legal communications may not be monitored or recorded. Legal personnel should be able to leave messages for residents, which should be delivered promptly.
8. Access to interpreters, translators or other services required to provide meaningful access to legal services should be provided on the same basis as access to legal personnel. Telephonic and video access to interpreters should be permitted for residents who speak less common languages and for whom local interpretation services are not readily available. Legal personnel should be permitted to bring interpreters of their choice to meet with residents, including interpreters from the law office who may or may not be on a facility-approved list.
9. ICE should ensure that each facility posts the list of local free legal services providers, updated regularly by EOIR. The list should be posted in resident housing units, near telephones, and in other appropriate areas, and copies should be made available upon request.

B. Access to Legal Materials and Information

1. Residents should have access to updated legal materials including current relevant codes, regulations, court rules, self-help materials, and legal forms. Sufficient private space should be set aside to enable residents to conduct legal research.
2. Each facility should maintain a law library that includes computer terminals with access to legal materials. The latter may be provided via on-line services like LexisNexis or Westlaw. Instruction on how to use computers, including on-line services, should also be provided. The law library should include updated editions (in hardcopy) of the relevant codes,

regulations, operating instructions, case reporters, treatises, self-help materials, model pleadings, court procedures, and other legal materials.

3. Residents who are unable to access legal resources or prepare for immigration or other proceedings because of language or reading limitations should have access to alternative services, including confidential translation services.
4. Officials should not read, alter, or destroy a resident's legal materials. Officials may inspect legal materials for physical contraband.

C. Access to Legal Correspondence

1. Residents should be permitted to send and receive special and legal correspondence confidentially, including by mail, facsimile, and e-mail (with reasonable limitations), and be provided access to copy machines, postage and notary services, according to this Standard and Standard VI.A Correspondence and Other Mail.
2. Facility staff should provide for the privacy of correspondence between residents and legal representatives. Facilities should afford the means for secure delivery of materials and documents from legal personnel to residents, including by mail, personal visits, and drop-off.
3. Under no circumstances should legal mail be read by anyone other than the intended recipient. Legal mail may be searched only for physical contraband, and searches should be conducted only in the presence of the resident to or from whom the letter is addressed.

D. Legal Orientation Presentations

1. Facilities should permit representatives from non-governmental organizations (NGOs) and nonprofit legal services organizations to conduct confidential legal orientation presentations, including group presentations and meetings with one or more residents, upon request. Legal orientation presentations may be pre-representational or take place after representation has been secured. They should include

information regarding immigration laws and processes, child custody matters, obtaining travel documents, and arranging for a child to join a parent in the event of deportation. Legal orientation presentations should be afforded the same confidentiality as legal meetings under this Standard.

2. Legal orientation presentations should be permitted to take place in person or via web- or videoconference. Facilities should provide adequate meeting space for in-person presentations.
3. Legal orientation presentations should be scheduled multiple times per week as needed to accommodate residents. Requests for presentations should be granted to the greatest extent practicable. Facility staff should publicize legal orientation presentations in advance, with accurate information about the content and provider of the presentations, and permit residents to participate as often as is practicable.
4. Presenting organizations should be permitted to provide written materials regarding immigration court procedures and the availability of legal information, relief from removal, and other relevant information, in accordance with Standard VII.B Access to Legal Materials and Information.
5. Facilities should regularly show the ABA Know Your Rights video on video monitors, and also make it available in the law library on demand.
6. Facility staff should also provide a comprehensive orientation to all new residents, covering, inter alia, the programs, physical plant, rules, procedures, and policies of the facility.

VIII. ACCESS TO HEALTH CARE SERVICES

This section incorporates by reference the standards in Part VI of the ABA Standards on the Treatment of Prisoners. The subsections below supplement the standards in Part VI. In cases where the contents of Part VI conflict with the subsections below, the subsections below should be followed.

1. Health care screening should be performed only by medical professionals, not security staff. Healthcare providers should be fluent in the languages predominant among the resident population.
2. Residents should not be sedated in order to facilitate their cooperation with removal from the country.
3. Restraints should not be used for patients in labor or post-partum, or when medically contraindicated. Residents should not be examined while they are in restraints.
4. A standard DHS/ICE electronic medical record will be used at all detention facilities.
5. Female health and hygiene needs should be fully met. Provision for these needs should include a choice of feminine hygiene products.
6. Residents should not be charged fees for necessary health care services. Required medications should be included in the facility formulary, whether or not they are available for purchase by residents, to assure access to necessary medical care.
7. Residents should always be told the name and the dosage of any medication they are given, and should be permitted access to a written record of the same, which residents can, if they so choose, permit legal personnel to see.
8. No resident should be allowed to provide health care evaluation or treatment to any other resident.

IX. ACCESS TO RELIGIOUS SERVICES

A. Right to Practice Religion

1. Residents of all faiths should have reasonable and equitable opportunities to attend religious services and engage in practices consistent with their faith traditions. In accordance with the Religious Freedom Restoration Act of 1993 and the Religious Land Use and Institutionalized Persons Act of 2000, DHS/ICE and facility policies should avoid imposing a substantial burden on residents' religious exercise except where the "least restrictive means available" is employed to serve a "compelling government interest."⁴
2. No matter where residents are held they should be afforded the protections of federal law. In the event that a resident is held temporarily in a hospital or a separate unit because of a health emergency or security-related incident, he or she should continue to have access to religious activities and practices to the extent compatible with medical and security requirements.
3. Attendance at all religious activities should be voluntary and religious personnel at the facility should employ a non-proselytizing model of pastoral care.
4. All religions represented in a detention population should have equal status without discrimination based on the resident's race, ethnicity, religion, national origin, gender, sexual orientation, disability or health status.
5. Religious service providers should have reasonable access to facilities and residents. Residents of faiths not represented by religious services staff should be assisted at their request

⁴ 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.

in contacting external clergy or religious service providers. Facilities should allow entry of religious services providers' interpreters. Visits from religious personnel should not count against a resident's visitor quota.

6. With respect to religious headwear, these standards incorporate by reference the standards contained in the DHS Office for Civil Rights and Civil Liberties' (CRCLs') *Guidance for Accommodating Religious Beliefs in DHS Policies Requiring Fingerprinting or Photographic Identification*.

B. Religious Services Coordinator

1. Each facility should have a professional Religious Services Coordinator — a position that should be held by non-security personnel — or a chaplain who should facilitate arrangements for religious services and for pastoral visits by clergy and other representative of the residents' faith(s).
2. The Religious Services Coordinator should have a basic knowledge of different religions and should ensure equal status and protection for all religions. A chaplain should have the minimum qualifications of clinical pastoral education or specialized training, and endorsement by the appropriate religious-certifying body.
3. In lieu of these qualifications, the facility administrator may accept adequate documentation of the recognized religious or ministerial position in the chaplain's faith community.
4. Religious Services Coordinators and chaplains should have the necessary training to connect residents with a broad range of religious services and be willing and able to arrange religious services for multiple faith traditions.

C. General Requirements for Access to Religious Services

1. Adequate space, equipment and staff (both clerical and security) should be provided for conducting and administering religious programs in areas of the facility that are not used as a cafeteria or for concurrent programs.

2. Upon entry to a facility, residents should be informed of the availability of religious services, and how to request and access those services. Each resident should be asked to designate any religious preference, or none, during intake processing.
3. Staff, contractors and volunteers should not disparage the religious beliefs of residents, nor coerce or harass residents to change religious affiliation.
4. A resident should be permitted to change his or her religious preference designation at any time by notifying the chaplain or religious services coordinator in writing. The change should be effected in a timely fashion.
5. Residents should not be required to remove their religious headwear for intake pictures, where the headwear does not obscure facial features.
6. Residents should be permitted to maintain their hair, including beards and facial hair, according to their faith practices and should be provided with personal hygiene items necessary for the practice of their religion(s).
7. Facility records should reflect the reasons for any limitation or discontinuation of a religious practice. A resident may submit a request for information concerning the reason for the denial of access to religious activities, facilities or meals. A copy of the request and a response to the request and the reason for denial should be placed in the detention file.
8. The ceremonial use of items and legal substances such as sacramental wine or incense that would otherwise be considered contraband inside a civil detention environment should be permitted under strict supervision. These substances should be dispensed under strict supervision for the sole and specific purpose of a religious ritual. The Religious Services Coordinator or chaplain should inform the facility staff of the procedures for procuring, storing, and using the substance or item in authorized services. The use of such items should be accomplished in a manner that avoids unnecessary and potentially disruptive confiscation of essential sacred elements.

9. Facilities should devote sufficient resources to purchasing and soliciting donations of religious texts and literature from multiple faith traditions, including but not limited to Korans and Bibles in versions acceptable to different Christian and Jewish groups (including the Hebrew Bible). This literature should be available in diverse languages. Residents should have access to multi-lingual religious libraries provided by the religious services program, as well as access to electronically available religious resources.
10. Facilities should accept religious materials such as rosaries, prayer shawls, prayer rugs or kurda provided by outside sources. The religious services coordinator will review all donated materials in light of need, safety and security considerations prior to their use or distribution.
11. Religious volunteers' background checks should be completed within two weeks. DHS should aim to clear religious personnel who are stationed inside facilities within one month.

D. Marriage, Illness, and Death Issues

1. Residents who have applied to and received approval from the ICE Field Office to marry should be permitted to do so. On-site marriage facilities should conform to relevant state law requirements.
2. The Religious Services Coordinator should ensure that during intake residents indicate whether they have religious preferences regarding health care choices and disposition of remains.
3. The Religious Services Coordinator should coordinate appropriate religious ceremonies and rituals at the time of a resident's serious illness or death in accordance with the resident's preferences, and following discussion with the resident's family. The coordinator should advise the facility administrator regarding religious factors that may influence decisions concerning the performance of autopsies and proper disposition of remains. *See* Standard XII.G Serious Illness and Death in Custody.

X. VISITATION

A. In-facility Visitation

1. Residents should be housed within a reasonable distance of their family, social and cultural support systems, or usual residence. ICE should promote regular visitation by family members and friends.
2. In the absence of security concerns, residents should be permitted to contact family members to arrange for visitation and in advance of a transfer to a remote detention facility.
3. When more than one family member is held in immigration custody, DHS/ICE should facilitate visitation between them and, if requested by the residents, should reunite them.
4. Facilities should permit contact visitation. Glass partitions, tables, or other physical barriers should not prevent contact between residents and visitors during contact visits. For example, handshaking, embracing, and kissing should be permitted at least at the beginning and end of the visit. Non-contact visits may be required only following an individualized determination that a contact visit poses a danger to security or safety. Such non-contact visits should ordinarily be in person absent an individualized determination that an in-person visit would pose a danger. Residents or visitors may request non-contact visits. Each restriction of visits should be documented.
5. Videoconferencing is not an acceptable substitute for contact visitation. Videoconferencing may be used to enable contact with family and friends who are distant or have difficulty traveling to the facility, but should not be used as the form of visitation provided to visitors who are physically at the facility.

6. Visitors should be permitted to visit every day including holidays, and during early morning, evening, and weekend hours. Visiting hours and rules should be standardized and communicated to residents in a language or manner they understand. Visiting hours and rules should be made available to the public including by phone, TTY, and internet, in English, Spanish, and other languages commonly spoken by residents and visitors.
7. Time limits for visits should be generous, at least two hours ordinarily, with additional time for visitors who must travel significant distances or are unable to visit frequently. Visitors should not be required to wait for protracted periods before a visit.
8. Facility visiting areas and visitor waiting areas should be comfortable and pleasant, with water and food items available, and with easy access to restrooms. Space should be provided for secure storage of visitors' coats, handbags, and personal items.
9. Facilities should not screen visitors' immigration status, or require visitors to provide a Social Security number. Visitor identification may include documents issued by foreign states, and identification without photographs if photographic identification is unavailable for religious or other acceptable reasons. Minors should not be required to produce identification. Visitors should not be excluded based solely on a prior conviction.
10. Visitors may be subject to personal search using nonintrusive screening techniques such as pat down, metal detector-aided searches, and visual inspection of handbags and other containers.
11. Verbal consent of residents should be sufficient to see visitors.
12. Visits to consenting residents from community volunteers should be accommodated.
13. Visitors should be permitted to leave money or property for residents, and should be provided with a receipt. Property

may include religious items, reading material, pictures, legal documents, eyeglasses, dentures, personal address books, correspondence, wedding rings, and telephone calling cards.

14. Residents who are separated for administrative or disciplinary reasons should retain visiting privileges.

B. External Visits

1. Residents should be permitted to visit family members detained at the same facility as well as family members detained at another facility.
2. Residents who are detained for more than 30 days should be permitted to request to be transferred to a facility that is more conducive to visits by family and friends.
3. Residents who are detained for more than 90 days, particularly those with U.S. citizen family members and minor children, should be eligible to leave a facility for home visits. DHS/ICE may impose reasonable conditions, including electronic monitoring and/or an escort, to ensure a resident's continued custody and return.
4. Residents should be permitted to leave a facility for compelling humanitarian reasons such as a visit to critically ill family members, to attend funerals or wakes, or to attend family court proceedings, criminal proceedings, or probation meetings. DHS/ICE may impose reasonable conditions, including an escort, to ensure the resident's return. If in-person attendance is not possible, attendance through videoconferencing or telephone should be arranged.

XI. ADMINISTRATION AND STAFFING

This section incorporates by reference the standards in Part X of the ABA Standards on the Treatment of Prisoners. The subsections below supplement the standards in Part X. In cases where the contents of Part X conflict with the subsections below, the subsections below should be followed.

A. Professionalism

1. In their interactions with residents, facility staff should model fair, respectful, and constructive behavior; engage in preventive problem solving; and rely upon effective communication.
 - a. Staff should address individual residents by the name(s) that they choose to be addressed.
 - b. Residents should be referred to as “residents” or by their chosen name, and should not be referred to as “prisoners,” “inmates,” or any other term connoting incarceration.
 - c. Staff should not wear prison-type uniforms or be referred to as “guards.”
 - d. If facility staff learns of a threat or actual harm to a resident or to staff, he or she should report that information promptly to a supervisor. Staff should also report any information relating to corrupt or criminal conduct by other staff directly to the facility administrator and to an independent government official with responsibility to investigate staff misconduct. Staff should provide investigators with full and candid information about observed misconduct.
2. DHS/ICE should collect, update, and make readily accessible to the appropriate officials and staff (through its standard information systems) all resident information that is

necessary to comply with its civil detention standards and custody review and release procedures.

B. Staffing and Recruitment

Facilities should be appropriately staffed to promote safety for all residents and staff, allow the full operation of all programs and services, and provide reasonable work schedules for staff.

1. Facility staffing should be sufficient to enable staff to engage in direct supervision in communal spaces during hours not designated for quiet and sleep.
2. Facility staffing should be sufficient to enable staff to be present in sufficient numbers to minimize the need for imposing restrictions on freedom of movement and to facilitate access to different sections of the facility.

C. Training

1. All facility staff should be adequately trained. Facility administrators should require all staff to participate in a comprehensive pre-service training program and a regular program of in-service training and specialized training when appropriate. Training programs should equip staff to:
 - a. Understand the constitutional and other legal rights of residents relevant to the staff's professional duties;
 - b. Understand and ensure compliance with these standards;
 - c. Maintain order while treating residents with respect;
 - d. Possess multicultural awareness and understand cultural differences;
 - e. Communicate effectively with residents, including residents from different cultures;
 - f. Use non-force techniques for avoiding and resolving conflicts;
 - g. Identify and respond to medical and mental health emergencies, recognize and report the signs and

symptoms of mental disability and suicide risk, and secure appropriate medical and mental health services in response;

- h. Detect and respond to signs of threatened and actual physical and sexual assault and sexual pressure against residents;
 - i. Avoid inappropriate relationships, including any sexual contact, with residents;
 - j. Facilitate resident use of the grievance process, and understand the grievance process's benefits for staff and facilities;
 - k. Maintain appropriate records, including clear and accurate reports; and
 - l. Maintain their professional qualifications and credentials through regular training and recertification.
- 2. Staff should have ready access to copies of these standards, and written policies and procedures related to operation of the facility.
 - 3. DHS/ICE and facility administrators should provide specialized training to staff who work with specific types of residents to address the physical, social, and psychological needs of such residents, including women, persons who face language or communication barriers, persons with physical or mental disabilities, persons who are under the age of 18, elderly persons, lesbian, gay, bisexual or transgender (LGBT) persons, torture survivors, asylum seekers, and others.

D. Privately Owned or Administered Civil Detention Facilities

- 1. DHS/ICE should be able to move residents from privately owned or operated facilities to alternative civil facilities if termination of the contract proves necessary. DHS/ICE should develop a comprehensive plan, in advance of entering into any contract, to ensure that it can meet this responsibility. Housing in county jails is not an acceptable alternative to civil detention.

2. Decisions relating to the length and location of a resident's confinement, discipline, transfer, and temporary or permanent release, should never be delegated to a private entity.
3. DHS/ICE should implement procedures to monitor compliance with its detention contracts and these standards systematically, regularly, and using a variety of on- and off-site monitoring techniques, including reviewing files and records, physically inspecting facilities, and interviewing staff and residents.

XII. PERSONAL SECURITY AND MANAGEMENT OF RESIDENTS

A. Personal Security

1. DHS/ICE and facility administrators should implement procedures to identify residents who are vulnerable to physical or sexual abuse, manipulation, or psychologically harmful verbal or other abuse by residents or by staff, and to protect these and other residents who request and need protection.
2. DHS/ICE and facility administrators should take all practicable actions to reduce violence and the potential for violence in facilities and during transport. DHS/ICE should promptly and thoroughly investigate and make a record of all incidents involving violence, and should take appropriate remedial and disciplinary action.
3. DHS/ICE and facility administrators should exercise reasonable care with respect to the property that residents lawfully possess or have a right to reclaim. DHS/ICE should provide a remedy for residents whose property is lost by facility staff or is stolen.

B. Prevention of and Response to Sexual Assault and Abuse

This subsection incorporates by reference the provisions of 28 C.F.R. § 115, which implement the Prison Rape Elimination Act of 2003 (PREA, P.L. 108-79, codified at 42 U.S.C. §§ 15601-15609), directing how facilities should prevent and report sexual abuse or harassment perpetrated against residents. The subsections below supplement the above referenced law and regulations. In cases where the contents of that law and regulations conflict with the subsections below, the subsections below should be followed.

1. DHS/ICE and facility staff should protect all residents from sexual assault by other residents, as well as from pressure by other residents to engage in sexual acts.
2. DHS/ICE and facility staff should protect all residents from any sexual contact with or sexual exploitation by staff, including volunteers and employees of any governmental or private organizations who work in the facility.
3. DHS/ICE and facility administrators should establish and publicize the means by which residents and staff may easily and confidentially report to DHS/ICE, facility administrators, and appropriate outside entities that a resident has been sexually assaulted, is being pressured to engage in sexual acts with another resident or staff, or there has been sexual contact or exploitation involving a resident and staff.
4. Facility administrators should promptly relay any such report, or any other information they obtain regarding such conduct, to DHS/ICE.
5. DHS/ICE should implement a policy of prompt and thorough investigation of any credible allegation of the threat or commission of sexual assault, or any sexual contact between a resident and staff. DHS/ICE and facility administrators should take all appropriate steps to protect the resident from further sexual assaults, contacts, or exploitation.
6. Medical treatment and testing, and psychological counseling, should be made immediately available to victims of sexual assault or sexual exploitation by staff or other residents. DHS/ICE and facility staff, including health care staff, should be trained to identify and document signs of sexual assault and should implement a protocol for providing victims with a thorough forensic medical examination performed by an appropriately trained and qualified medical professional.
7. DHS/ICE and facility staff, including health care staff, should not disclose information about any incident of resident sexual abuse, except to other staff or law enforcement personnel who need to know about the incident in order to make treatment,

investigation, or other security or management decisions, or to appropriate external oversight officials or agencies.

C. Prevention of Harm

1. DHS/ICE and facility administrators should take all practicable actions to reduce violence and the potential for violence in civil detention facilities and during transport. DHS/ICE and facility administrators should promptly and thoroughly investigate and make a record of all incidents involving violence, and should take appropriate remedial action.
2. DHS/ICE and facility administrators should implement procedures for identifying residents who are vulnerable to physical or sexual abuse, manipulation, or psychologically harmful verbal or other abuse by residents or by staff, and for protecting these and other residents who request and need protection.
3. DHS/ICE and facility administrators should implement procedures to identify residents at risk of suicide and to intervene to prevent suicides. When an initial mental health screening or any subsequent observation identifies a risk of suicide, the resident should be placed in a safe setting and be promptly evaluated by a qualified mental health professional, who should determine the degree of risk, required level of supervision, and appropriate course of mental health treatment.

D. Searches

1. Searches of a resident's body, living quarters, and possessions should follow written protocols that implement this Standard.
2. Pat-down searches and other clothed body searches should be conducted only after contact visits or upon individualized, reasonable suspicion of wrongdoing or a threat. Pat-down searches should be conducted by staff of the same gender as the resident; should be brief; and should avoid unnecessary force, embarrassment, and indignity to the resident.
3. Visual searches of a resident's private bodily areas should be conducted only upon entry into the facility or upon

probable cause to believe the resident is carrying contraband. Such searches should be conducted by trained personnel of the same gender in a private place out of the sight of other residents and of staff not involved in the search, except that a resident should be permitted to request that more than one staff member be present.

4. Facility staff should conduct all searches of resident living quarters and possessions so as to minimize damage to or disorganization of resident property and unnecessary invasions of privacy. A resident should be permitted to observe a search of his or her living quarters or possessions. The invasiveness of a search into a resident's sleeping area, possessions, or clothing should be proportionate to the grounds for the search.
5. Legal materials should be searched only for contraband, and should not be read, reviewed, altered, or destroyed during the course of a search.
6. DHS/ICE and facility administrators should keep records of all facility searches. The records should identify the circumstances of the search, the persons conducting the search, staff and residents who were witnesses, and contraband or other confiscated materials. The resident should be given written confirmation of the property confiscated.

E. Discipline

1. All decisions to administer discipline should be approved by DHS/ICE.
2. Disciplinary procedures should provide residents with a meaningful opportunity to contest alleged violations and to appeal disciplinary determinations.
3. Disciplinary measures should be incremental and proportionate to violations.
4. In no case should disciplinary measures, including disciplinary separation, deny or limit:

- a. Access to sufficient light to permit reading in the resident's housing area, and access to reasonable darkness during sleeping hours;
- b. Adequate ventilation, heat or air conditioning as necessary;
- c. Opportunity to sleep;
- d. Access to medication, medical devices, or other forms of healthcare;
- e. Nutrition, including access to water;
- f. Visits or communication with counsel, clergy, or family members; or
- g. Access to outdoor recreation.

F. Use of Force

- 1. Facility administrators should authorize the use of force against a resident only:
 - a. To protect and ensure the safety of staff, residents, and others; to prevent serious property damage; or to prevent escape;
 - b. If facility administrators reasonably believe the benefits of force outweigh the risks to other residents and staff; and
 - c. As a last alternative after other reasonable efforts to resolve the situation have failed.
- 2. In no case should staff use force against a resident:
 - a. To enforce an institutional rule or an order unless the disciplinary process is inadequate to address an immediate security need;
 - b. To gratuitously inflict pain or suffering, punish past or present conduct, deter future conduct, intimidate, or gain information; or
 - c. After the risk that justified the use of force has passed.

3. Restraints should only be used in emergencies: if a resident's behavior poses an immediate risk to the safety of others or to the resident, or poses an immediate risk of serious property damage; and if less restrictive means have been determined to be ineffective. When restraints are necessary, authorities should use the least restrictive forms of restraints that are appropriate and should use them only as long as the need exists, not for a predetermined period of time. Restraints should not be applied to residents when medically contraindicated, including during labor and postpartum.

G. Serious Illness and Death in Custody

This section incorporates by reference ICE PBNDs 2011 Standard 4.7 Terminal Illness, Advance Directives and Death Standard, including the ICE Directive on "Notification and Reporting of Detainee Deaths," Directive 7.9-0, October 1, 2009. The subsections below supplement that Standard. In cases where the contents of that Standard conflict with the subsections below, the subsections below should be followed.

1. DHS/ICE and facility staff should establish and comply with clear procedures involving the proper manner to notify residents and their families in cases of serious illness or death of either residents or their family members.
2. When a resident dies, DHS/ICE should promptly notify family members, consular officials, and the appropriate medical examiner of the death and its circumstances.
3. An autopsy should be performed whenever a resident dies in ICE custody.
4. All deaths of residents, including their circumstances, should be immediately reported to DHS/ICE headquarters and to other federal agencies that collect data on deaths in custody.
5. In the event of serious illness or death, religious preferences expressed by residents should be followed to the extent possible.

XIII. ADMINISTRATIVE AND DISCIPLINARY SEPARATION

This section incorporates by reference all protections afforded by the ABA Standards on the Treatment of Prisoners Standard 23-2.7 (“Rationales for long-term segregated housing”), and Standard 23-2.9 (“Procedures for placement and retention in long-term segregated housing”). The subsections below supplement those Standards. In cases where the provisions of those Standards conflict with the subsections below, the subsections below should be followed.

A. Separation Generally

1. DHS/ICE should ensure that facilities have the capacity to separate residents from the general population for administrative and disciplinary reasons.
2. The due process protections available to residents should be proportionate to their anticipated time in separation.

B. Administrative Separation

1. Administrative separation status is a nonpunitive status in which restricted conditions of confinement are required only to ensure the safety of residents or others, the protection of property, or the security or good order of the facility.
2. Residents in administrative separation should not be commingled with residents in disciplinary separation.
3. DHS/ICE should develop and follow written procedures, consistent with this standard, governing the separation of residents. Facilities should provide detailed reasons for placement of an individual in administrative separation. Residents and their attorneys should be provided prompt written notice of administrative separation decisions.

4. Prior to the resident's placement in administrative separation, a facility supervisor should review the case in order to determine whether administrative separation is warranted.
5. Reasons for Placement in Administrative Separation
 - a. A resident should be placed in administrative separation when the resident's continued presence in the general population poses a threat to life, property, self, staff, or other residents; for medical reasons; or under other circumstances set forth below. Examples of incidents warranting a resident's assignment to administrative separation may include, but are not limited to, the following:
 - i. A resident is awaiting an investigation or a hearing for a violation of facility rules, but only as necessary to protect the security and orderly operation of the facility.
 - ii. A resident is a threat to the security of the facility.
 - iii. A resident requires protection. Separation may be initiated at the resident's request or by staff in order to protect the resident from harm. DHS/ICE should develop procedures for separation of residents in these circumstances, as well as to reintegrate them into the general population post-separation.
6. Review of Resident Status in Administrative Separation
 - a. DHS/ICE should develop written procedures for the regular review of all residents held in administrative separation, consistent with the procedures specified below.
 - b. A facility supervisor should conduct a review within 24 hours of the resident's placement in administrative separation to determine whether separation is still warranted. The review should include an interview with the resident.
 - c. A written record should be made of the decision and its rationale.

- d. A supervisor should conduct an identical review after the resident has spent seven days in administrative separation, and every week thereafter, at a minimum.
- e. The review should include an interview with the resident, and a written record should be made of the decision and its rationale.
- f. A copy of the decision and rationale for each review should be provided to the resident unless, in exceptional circumstances, this provision would jeopardize the facility's safety, security, or orderly operations. The resident should also be afforded an opportunity to appeal a review decision to DHS/ICE. The appeal should take into account the resident's views and should result in a written record of the decision and its rationale.
- g. A daily report should be kept and reviewed monthly by DHS/ICE that explains decisions to keep a resident in administrative separation.
- h. When a resident has been held in administrative separation for more than 30 days cumulatively, the facility should notify DHS/ICE in writing.

C. Disciplinary Separation

- 1. A resident may be placed in disciplinary separation only by order of the facility administrator, after a hearing in which the resident has been found to have committed a crime or a serious violation of a facility rule, and when alternative dispositions would inadequately regulate the resident's behavior.
- 2. Duration
 - a. The maximum stay in disciplinary separation is 30 days, except in extraordinary circumstances. If facility staff wishes to separate a resident for more than 30 days, staff should send a written justification to a DHS/ICE supervisor.

3. Review of Resident Status in Disciplinary Separation
 - a. DHS/ICE should implement written procedures for the regular review of all disciplinary separation cases, consistent with subsection b:
 - b. A security supervisor, or the equivalent, should interview the resident and review his or her status in disciplinary separation every seven days to determine whether the resident is provided showers, meals, visitation, recreation, law library access, and appropriate treatment in accordance with these standards.
4. The supervisor should document his or her findings after every review.
5. The supervisor should recommend the termination of disciplinary separation upon finding that it is no longer necessary to regulate a resident's behavior.
6. The supervisor may shorten, but not extend, the original term of separation.
7. All review documents should be placed in the resident's detention file.
8. After each formal review, the resident and his or her attorney should be given a written copy of the reviewing officer's decision and the basis for his or her finding, unless this step would compromise institutional security. If a written copy cannot be delivered, the resident should be advised of the decision orally, and the detention file should so note, identifying the reasons why the notice was not provided in writing.

D. Requirements for Administrative and Disciplinary Separation

1. Requirements generally
 - a. Conditions of separation should be based on the amount of supervision required to control a resident and to safeguard the resident, other residents and facility staff.

- b. Residents should be evaluated by a medical professional, including for mental health, prior to placement in separation.
 - c. Separated residents should be permitted as much time out of their rooms as possible, consistent with good security practices.
 - d. In every instance, any exceptions to these requirements should be:
 - i. Made only for the purpose of ensuring resident and staff safety (i.e., not for purposes of punishment);
 - ii. Approved by a DHS/ICE supervisor;
 - iii. On a temporary and situational basis, continued only for as long as is justified by threat to the safety or security of the facility, its staff, or resident population; and
 - iv. Documented in both the facility's records and the individual resident's detention file.
2. Special Needs
- a. Separated residents should be provided appropriate accommodations and professional assistance for special conditions as needed (e.g., translation and interpretation services; and medical, therapeutic, or mental health treatment), on an equal basis as residents in the general population.
3. Rooms
- a. Rooms used for purposes of separation must be appropriately sized, well ventilated, adequately lit, heated/cooled as necessary, and maintained in a sanitary condition at all times in accordance with the standards for general population.
 - b. Residents should be able to exercise control over lighting in their rooms and should have access to natural light, if the physical plant allows it.

4. Privileges

a. Administrative Separation

- i. Residents in administrative separation should receive the same privileges available to residents in the general population, consistent with safety and security considerations for residents and facility staff. They should be provided opportunities to spend time outside their rooms (in addition to the required recreation periods), in order to socialize, watch television and pursue other activities.

b. Disciplinary Separation

- i. Residents in disciplinary separation may be subject to more stringent controls, particularly as relates to personal property.

E. Supervisory and Staff Visits

In addition to the direct supervision performed by facility staff:

1. Shift supervisors should review each unit in which separated residents are held and see each resident on a daily basis, including on weekends and holidays.
2. Program staff may visit a separated resident upon the resident's request.

F. Health Care

This subsection incorporates by reference the provisions of the ABA Standards on the Treatment of Prisoners Standard 23-2.8 ("Segregated housing and mental health") that pertain to the monitoring of the mental health of residents in segregated housing.

1. Health care personnel should conduct face-to-face medical assessments at least once each day for separated residents. When an assessment creates cause for concern, it should be followed up with a complete evaluation by a qualified medical or mental health professional, and indicated treatment.

2. Residents with serious mental illness should be placed in a setting within or outside of the facility in which appropriate treatment can be provided.
3. Separation should not be viewed or used as treatment for mental health issues.
4. Residents with serious mental illness should not be placed in prolonged solitary confinement.
5. Residents with serious mental illness who are separated should be evaluated outside of their cells by a mental health provider at least once every seven days for routine care as well as to determine whether or not continued separation is or will be detrimental to their mental health.
6. Medical visits should be recorded, and any action taken should be documented in a separate logbook and in the individual resident's detention file.

G. Communications

1. Separated residents should be permitted to write, send and receive letters and other correspondence, in a manner similar to those housed in the facility's general population.
2. Separated residents should have access to telephones in a manner that is consistent with safety and security requirements. They should be permitted to place calls to attorneys, other legal representatives, courts, embassies, consulates, and government offices, including the DHS OIG, DHS CRCL, ICE Joint Intake Center, and ICE's Public Advocate. Telephone access may be denied only as necessary to protect the security of the resident, other residents, or the security or orderly operation of the facility. Denials of telephone use should be documented.

H. Access to Legal Services

1. Separated residents should have access to legal services in accordance with Standard VII. Access to Legal Services, subject only to restrictions necessary to ensure the safety and security

of the resident, visitor, or facility staff. A resident's attorney of record should be notified of any separation within 24 hours.

2. Residents separated for their own protection should be provided access to legal research tools and materials. Such residents may be required to use the law library at separate times from the general population. If such residents do not have equal or equivalent access to the law library, legal materials should be brought to them upon request.
3. Denial of access to the law library should be supported by compelling security concerns; for the shortest period required for security; and fully documented in the facility logbook.
4. The facility administrator should notify DHS/ICE every time access is denied, and documentation, including the rationale for denial, should be placed in the detention file.
5. DHS/ICE and facility staff should notify separated residents in advance of legal orientation presentations and provide these residents an opportunity to attend, except when a particular resident's attendance poses a security risk. If a separated resident cannot attend for this reason, designated facility staff should make alternative arrangements to offer a separate presentation and individual consultation to the resident.

I. Visitation

1. Separated residents should retain visiting privileges.
2. Separated residents should ordinarily be able to use the visiting room during normal visiting hours. The facility may restrict or disallow visits for separated residents only as necessary to protect the security of the resident or to ensure the security or orderly operation of the facility.
3. When visits are restricted or disallowed, a report should be filed with the facility administrator and DHS/ICE, and made part of the resident's file.
4. Separated residents in need of protection, as well as violent and disruptive residents, may be prohibited from using the visitation room during normal visitation hours as necessary

to protect the resident(s) or the security or orderly operation of the facility. Visits may be disallowed only as necessary to protect the security of the resident(s) or the security or orderly operation of the facility.

J. Access to Religious Services

Separated residents should be permitted to participate in religious practices in accordance with Standard IX. Access to Religious Services, subject to restrictions necessary to protect the safety and security of the resident, visitor, or facility staff, or to ensure the orderly operation of the facility.

K. Reading Materials (Non-Legal)

Separated residents should have access to reading materials, including religious materials.

L. Recreation

1. Separated residents should be offered at least two hours of recreation and exercise per day, outside their rooms and with other residents, scheduled at a reasonable time, at least seven days per week. Such residents should also have access to radio and television.
2. Separated residents should be provided with weather-appropriate equipment and attire where cover is not provided to mitigate inclement weather.
3. Recreation should be denied or suspended only if the resident's recreational activity may unreasonably endanger safety or security.
4. When a separated resident is deprived of recreation (or any usual authorized items or activity), a written report of the action should be forwarded to the facility administrator. Denial of recreation must be evaluated daily by a shift supervisor.
5. A resident in disciplinary separation may temporarily lose recreation privileges upon a written determination that he

or she poses an unreasonable risk to the facility, to himself or herself, or to others.

6. When recreation privileges are suspended, the disciplinary panel or facility administrator should provide the resident with written notification, including the reason(s) 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.
7. The denial of recreation privileges should be included as part of the regular reviews required for all separated residents. The reviewer(s) should state, in writing, whether the resident continues to pose a threat to self, others, or facility security and, if so, how.
8. Recreation privileges should be denied for more than seven days only in extreme circumstances and with the written concurrence of the facility administrator and a health care professional.
9. The facility should notify DHS/ICE in writing when a resident is denied recreation privileges for more than seven days.

XIV. GRIEVANCES

A. Establishing and Notification of Procedures

1. The facility should provide meaningful and timely procedures for residents to submit grievances against staff and other residents, as well as in response to facility conditions, failure to comply with these standards, or the non-provision or deficient provision of medical care.
2. Facility staff and residents should be fully informed of grievance procedures.
3. Residents should be able to bring grievances in a confidential manner, through a formal process, to facility administrators and to DHS/ICE officials.
4. DHS/ICE should be the final arbiter of grievances.

B. No Retaliation

Retaliation for filing grievances should be strictly prohibited.

C. Records and Reporting

1. Records of grievance submissions and their resolution should be maintained at the facility and by DHS/ICE.
2. Records of grievance submissions and their resolution should be available for review by DHS/ICE, inspectors and facility administrators.
3. Grievances in each facility should be aggregated in a monthly report to DHS/ICE headquarters that includes information about the types of complaints, their resolution, and the time for completion. These monthly reports should be available through open records requests.

4. DHS/ICE and facility administrators should routinely review grievances for patterns in complaints, including complaints about particular staff members, particular parts of the facility, or failure to comply with these standards.

XV. ACCOUNTABILITY AND OVERSIGHT

This Part incorporates by reference ABA Standards on the Treatment of Prisoners Standards 23-11.4 (“Legislative oversight and accountability”) and 23-11.5 (“Media access to correctional facilities and prisoners”), which pertain to legislative oversight and media access.

A. Internal accountability

1. DHS oversight units, including CRCL, should review all facility inspection reports, and should prepare reports that summarize the facility inspection reports, highlight findings and recommend improvements at least twice annually. These biannual reports should be promptly released to the public.
2. If DHS/ICE contracts for provision of any services or programs, it should ensure that the contract requires the provider to comply with all civil detention standards and to meet the related performance outcomes. DHS/ICE should implement a system to monitor compliance with its contracts, to hold the contracted providers accountable for any deficiencies, and to terminate its use of facilities that do not perform critical activities or meet required outcomes.
3. Accreditation agencies should develop standards for civil detention facilities and DHS/ICE should ensure that facilities meet these standards.
4. DHS/ICE and facility administrators should regularly review use of force reports, serious incident reports, separation reports, and grievances, and take any necessary remedial action to address facility or system-wide problems.
5. DHS/ICE should routinely collect, analyze, and publish statistical information on detention operations, including attorney visits, family visits, security incidents, sexual assaults, resident grievances, uses of force, health and safety,

spending on programs and services, program participation and outcomes, staffing, and employee discipline.

6. DHS/ICE should develop uniform national definitions and methods of defining, collecting, and reporting accurate and complete data.
7. Congress or state or local government authorities should not exempt DHS/ICE or detention contractors from the Administrative Procedure Act, Freedom of Information Act, or Public Records Act.

B. External regulation and investigation

1. Independent governmental bodies responsible for such matters as fire safety, sanitation, environmental quality, food safety, education, and health should regulate, inspect, and enforce regulations in facilities.
2. Facilities should be subject to the same enforcement penalties and procedures, including abatement procedures for noncompliance, as are applicable to other institutions.
3. Independent observers, including NGOs, should be permitted to monitor compliance with these standards and to issue public reports. DHS/ICE and detention administrators (including contract or jail employees) should allow observers complete access to the facility and should cooperate as fully as possible with observer requests, including by international organizations.
4. DHS/ICE and facility administrators should encourage and accommodate visits by judges and lawmakers and by members of faith-based groups, the business community, institutions of higher learning, and other groups interested in immigration detention issues.

C. Access to Facility by Non-Governmental Organizations

1. NGOs, other stakeholders, and the press should be authorized upon request to tour facilities and to conduct interviews with staff and consenting residents, and to issue public reports.

2. Denial of tour requests or of access to any part of a facility or to particular staff or residents should be explained in writing.
3. DHS/ICE may require that access requests include names of tour participants and be submitted as many as 10 business days in advance of the requested tour date.
4. Tour participants should be able to pre-identify consenting residents with whom they wish to meet, and ask that consenting residents sign up for meetings on site. Consistent with ICE's Stakeholder Procedures for Requesting a Detention Facility Tour and/or Visitation, participants should not be required to pre-identify residents in order to meet with them during a tour.
5. Residents should be informed that speaking with tour participants is voluntary, and that tour participants are not government representatives and that residents should not solicit legal representation from them.
6. Tours should ordinarily include housing units, medical facilities, libraries, recreation areas, dining facilities, kitchens, visitation areas, separation units, and other areas of interest to the tour participants.
7. Residents should be permitted to meet with tour participants in a setting where their conversation cannot be overheard or recorded by staff or other residents. Communication should not be through a glass or other barrier.

D. Access to Facility by Foreign Government Officials and Supranational Organizations

1. DHS/ICE should inform residents of their right to have embassy and consular officials notified that they are in custody.
2. Upon request by the detainee, embassy and consular officials should be allowed to visit privately with any resident who is a citizen of their country.
3. Embassy and consular officials should be given the opportunity to visit with residents on short notice and outside of usual

visiting hours, and to exchange confidential documents with the residents.

4. Representatives of international and intergovernmental organizations should be allowed to visit civil detention facilities and speak confidentially with residents and staff.
5. Consular officials should be able to visit, converse and communicate with, and otherwise have full access to their nationals who are in DHS/ICE custody, unless the resident declines the visit, consistent with the Vienna Convention on Consular Relations.

GLOSSARY OF TERMS

Administrative Separation – *see Separation.*

Assessment is the process conducted at intake in which an individual’s legal, medical, family and other circumstances are considered and measured against categories employed by DHS/ICE to determine the resident’s classification.

Classification is the decision made based on the assessment process as to whether a person subject to DHS custody should be detained, where (geographic), at what manner of facility, and subject to what special conditions.

Detainee (Immigration Detainee) is a person held in DHS custody due to a potential or confirmed violation of civil immigration laws. Since “detainee” may connote criminal and short-term custody, these standards typically use the term “resident” to refer to persons in DHS/ICE and DHS/CBP custody. *See “Resident” below.*

Direct Supervision is an approach to detention management that seeks to maintain a staff presence in communal areas at all times. This approach is intended to allow for significant freedom of movement for residents, while also making staffing more cost effective.⁵

Disciplinary Separation – *see Separation.*

Executive Office for Immigration Review or EOIR is the U.S. Department of Justice (DOJ) agency that administers the immigration court system and the appellate Board of Immigration Appeals (BIA).

Facility (Detention Facility) is any building or structure that houses immigration detainees. Detention facilities currently include federal Bureau of Prisons (BOP) facilities; state and local jails, where immigration detainees are sometimes housed with individuals serving sentences for criminal convictions, and which are sometimes

⁵ *See generally*, NAT’L INST. OF CORRECTIONS, U.S. DEP’T OF JUSTICE, DIRECT SUPERVISION JAILS: 2006 SOURCEBOOK (3d ed. 2006), available at <http://nicic.gov/Library/021968>.

operated by private contractors under agreements with state or local governments; Service Processing Centers, which are owned and operated by DHS/ICE; and Contract Detention Facilities, which are owned and operated by private contractors under agreements with DHS/ICE.

Family member includes biological and adopted family members, as well as spouses (including common law spouses), domestic partners, stepparents and stepsiblings, foster family, and in-laws.

Force means offensive or defensive physical contact with a resident, including blows, pushes, or defensive holds, whether or not involving batons or other instruments or weapons; discharge of chemical agents; discharge of electronic weaponry; and application of restraints such as handcuffs, chains, irons, straitjackets, or restraint chairs.

Immigration and Customs Enforcement or ICE is the U.S. Department of Homeland Security (DHS) agency with custody over most immigration detainees. DHS's Customs and Border Protection (CBP) agency has short-term custody over persons who (typically) are arrested at or near U.S. land borders.

Indigent means without funds, or with only nominal funds.

Intake is the process through which a detainee is registered either with DHS/ICE or with a particular facility where the individual will be housed. Intake involves recording various points of information about the individual, including medical status, legal status, and other information important to the administration of the individual's detention.

Joint Intake Center (JIC) is the entity within DHS responsible for recording and tracking salient information about all individuals in ICE's custody. JIC creates and maintains current files for all detainees, and also receives complaints about the implementation of ICE policies.

Legal personnel refers to a legal representative or an individual (other than an interpreter) working under the direction and supervision of an attorney, who assists with group legal presentations and in representing individual residents. Legal personnel may interview residents, assist them in completing forms, and deliver case-related papers to them without the supervisory attorney being present.

Legal representative means an attorney or person who is otherwise legally permitted to represent another in a matter of law, including law students; law graduates not yet admitted to the bar; “reputable individuals”; accredited representatives; and accredited officials and attorneys outside the United States (*See* 8 CFR § 292.1).

Medical evaluation means a comprehensive assessment of a detainee’s medical and mental status, intended to capture information about current illness, ongoing treatment regimens, and risk factors for various forms of illness while in custody.

Normalized environment means a combination of floor plans, fixtures, amenities, procedures and programs that allow for living circumstances that approximate normal life outside the facility. Such an environment should more closely resemble a secure college dormitory than a jail.

Performance-Based National Detention Standards (PBNDS) are the standards developed and promulgated by ICE to govern the treatment of persons subject to ICE custody pending immigration proceedings and removal. The PBNDS set forth the outcomes and performance measures that must be met in order to satisfy particular standards. They are based on American Correctional Association standards for pre-trial criminal detention.

Resident refers to an individual who is detained in the civil immigration detention system. It is the term that ICE and facility staff should use to refer to persons in their custody.

Separation means to hold a resident apart from the general population, when the resident’s continued presence would pose a threat to other residents, staff, or the security of the facility. Separation may also be appropriate for residents who pose a threat to themselves; require protection; are en route to another facility; are awaiting a hearing before a disciplinary panel; have received a separation order from a disciplinary panel; or should be separated for medical reasons. The standards use the term “separation,” rather than “segregation” because the latter connotes criminal custody. **Administrative separation** of a resident is undertaken in the interest of the safety, security, and wellbeing of that resident, and not for disciplinary reasons. **Disciplinary separation** is undertaken in response to

actions by a resident that call for response by facility staff in order to maintain the safety and security of residents and staff.

Serious Mental Illness means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality or cope with the ordinary demands of life within the detention facility environment and is manifested by substantial pain or disability. It includes the status of being actively suicidal; severe cognitive disorders that result in significant functional impairment; and severe personality disorders that result in significant functional impairment and are marked by frequent episodes of psychosis, depression, or self-injurious behavior. (See ABA Standards on the Treatment of Prisoners Standard 23-1.0, “Definitions.”)

Special or legal correspondence refers to a resident’s written communications to or from the following non-exhaustive list of individuals and entities: legal personnel; government attorneys; judges; courts; embassies and consulates; White House officials; DHS (including its Office for Civil Rights and Civil Liberties, its Office of the Inspector General, its Joint Intake Center, and ICE’s Public Advocate); the DOJ (including EOIR and the DOJ Office of the Inspector General); U.S. Public Health Service (including the Division of Immigration Health Services); administrators of grievance systems; representatives of the news media; representatives of oversight bodies, Congress or other legislative bodies; internal affairs representatives; government Ombudsmen; law enforcement personnel; the United Nations High Commissioner for Refugees (UNHCR); other relevant international agencies; and human rights agencies and others that can assist in documenting legal claims.

Staff (Facility Staff) means all full- and part-time staff whose employment entails work at a detention facility, whether as a DHS employee, an employee of a private corporation, or an employee of a state or local correctional facility.

Vulnerable populations (individuals) include children and minors under age 18; elderly persons; survivors of torture or violence; persons with mental or physical disabilities; pregnant women; persons with serious medical conditions and mental illness; transgender persons; and persons likely to be subject to physical or sexual abuse, manipulation, or severe verbal abuse in a facility.



AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association adopts the ABA Civil Immigration Detention
- 2 Standards as amended August 2014

This resolution amends the ABA Standards to include provisions that: 1) limit the use of segregation, and particularly solitary confinement, except as a last resort where no other alternative is available; 2) restrict segregation to the shortest time necessary; 3) urge DHS/ICE to refrain from contracting with facilities whose only means of segregation is solitary confinement; 4) require that a resident not be placed in separation based only on age, gender identity, sexual orientation, mental health status or condition, pregnancy, or disability; 5) limit the duration of administrative and disciplinary segregation to 15 days except in extraordinary circumstances; and 6) require and make publicly available an annual report to Congress each incidence of use, reasons for, and duration of segregation in all immigration detention facilities and whether a timely assessment by ICE as to its suitability was made.

XIII. ADMINISTRATIVE AND DISCIPLINARY SEPARATION

This section incorporates by reference all protections afforded by the ABA Standards on the Treatment of Prisoners Standard 23-2.7 (“Rationales for long-term segregated housing”), and Standard 23-2.9 (“Procedures for placement and retention in long-term segregated housing”). The subsections below supplement those Standards. In cases where the provisions of those Standards conflict with the subsections below, the subsections below should be followed.

A. Separation Generally

1. DHS/ICE should ensure that facilities have the capacity to separate residents from the general population appropriately for administrative and disciplinary reasons.
2. Separation should be utilized as a last resort, only after consideration of release on recognizance or reassignment into alternatives to detention and all other alternatives to separation, and should be restricted to the shortest time necessary. Solitary confinement, as the most extreme form of separation, should be used only in extraordinary circumstances where no other alternatives are viable. ICE should refrain from contracting with facilities whose only means of separation is solitary confinement.
3. The due process protections available to residents should be proportionate to the frequency with which the resident has been placed previously in separation and the anticipated time in separation.

B. Administrative Separation

1. Administrative separation status is a non-punitive status in which restricted conditions of confinement are required only to ensure the safety of residents or others, the protection of property, or the security or good order of the facility.
2. Residents in administrative separation should not be commingled with residents in disciplinary separation.
3. DHS/ICE should develop and follow written procedures, consistent with this standard, governing the separation of residents. Facilities should provide detailed reasons for placement of an individual in administrative separation. Residents and their attorneys should be provided prompt written notice of administrative separation decisions.
4. Prior to the resident's placement in administrative separation, a facility supervisor should review the case in order to determine whether administrative separation is warranted.
5. Reasons for Placement in Administrative Separation
 - a. A resident should be placed in administrative separation when the resident's continued presence in the general population poses a threat to life, property, self, staff, or other residents; for medical reasons; or under other circumstances set forth below. Examples of incidents warranting a resident's assignment to administrative separation may include, but are not limited to, the following:
 - i. A resident is awaiting an investigation or a hearing for a violation of facility rules, but only as necessary to protect the security and orderly operation of the facility.
 - ii. A resident is a threat to the security of the facility.
 - iii. A resident requires protection. Separation may be initiated at the resident's request or by staff in order to protect the resident from harm. DHS/ICE should develop procedures for separation of residents in these circumstances, as well as to reintegrate them into the general population post-separation.
 - b. A resident should not be placed in separation based only on age, gender identity, sexual orientation, mental health status or condition, pregnancy, or disability.
6. Duration
 - a. The maximum stay in administrative separation while in ICE custody is a total of 15 days, except in extraordinary circumstances. When extraordinary circumstances necessitate the separation of a resident for more than 15 days, the facility shall electronically transmit a

written justification to ICE prior to the expiration of the 15-day period.

- b. Any situation that warrants extended or repeated placement of the resident in administrative segregation shall be addressed by releasing the resident on recognizance or reassigning the resident to an alternative to detention placement or to another facility that will address the resident's administrative needs.

7. Review of Resident Status in Administrative Separation

- a. DHS/ICE should develop written procedures for the regular review of all residents held in administrative separation, consistent with the procedures specified below.
- b. A facility supervisor should conduct a review within 24 hours of the resident's placement in administrative separation to determine whether separation is still warranted. The review should include an interview with the resident.
- c. A written record should be made of the decision and its rationale.
- d. A supervisor should conduct an identical review after the resident has spent a total of seven days in administrative separation and every week thereafter, at a minimum.
- e. The review should include an interview with the resident, and a written record should be made of the decision and its rationale.
- f. A copy of the decision and rationale for each review should be provided to the resident unless, in exceptional circumstances, this provision would jeopardize the facility's safety, security, or orderly operations. The resident should also be afforded an opportunity to appeal a review decision to DHS/ICE. The appeal should take into account the resident's views and should result in a written record of the decision and its rationale.
- g. A daily report should be kept and reviewed monthly by DHS/ICE that explains decisions to keep a resident in administrative separation.
- h. When a resident has been held in administrative separation for more than 15 days cumulatively, the facility should notify DHS/ICE in writing.

C. Disciplinary Separation

- 1. A resident may be placed in disciplinary separation only by order of the facility administrator, after a hearing in which the resident has been found to

have committed a crime or a serious violation of a facility rule, and when alternative dispositions would inadequately regulate the resident's behavior.

2. Duration

- a. The maximum stay in disciplinary separation is a total of 15 days except in extraordinary circumstances. If facility staff wishes to separate a resident for more than 15 days, the facility staff shall electronically transmit a written justification to ICE prior to expiration of the 15-day period. ~~If facility staff wishes to separate a resident for more than 30 days, staff should send a written justification to a DHS/ICE supervisor.~~

3. Review of Resident Status in Disciplinary Separation

- a. DHS/ICE should implement written procedures for the regular review of all disciplinary separation cases, consistent with subsection b:
 - b. A security supervisor, or the equivalent, should interview the resident and ascertain the necessity for continued placement in disciplinary separation every seven days.
 - c. A security supervisor or the equivalent, should interview the resident daily to determine whether the resident is provided showers, meals, visitation, recreation, law library access, and appropriate treatment in accordance with these standards.
4. The supervisor should document his or her findings after every review.
 5. The supervisor should recommend the termination of disciplinary separation upon finding that it is no longer necessary to regulate a resident's behavior.
 6. The supervisor may shorten, but not extend, the original term of separation.
 7. All review documents should be placed in the resident's detention file.
 8. After each formal review regarding continued separation, the resident and his or her attorney should be given a written copy of the reviewing officer's decision and the basis for his or her finding, unless this step would compromise institutional security. If a written copy cannot be delivered, the resident should be advised of the decision orally, and the detention file should so note, identifying the reasons why the notice was not provided in writing.

D. Requirements for Administrative and Disciplinary Separation

1. Requirements generally

- a. Conditions of separation should be based on the amount of supervision required to control a resident and to safeguard the resident, other residents and facility staff.
 - b. Residents should be evaluated by a medical professional, including for mental health, prior to placement in separation.
 - c. Separated residents should be permitted as much time out of their rooms as possible, consistent with good security practices.
 - d. In every instance, any exceptions to these requirements should be:
 - i. Made only for the purpose of ensuring resident and staff safety (i.e., not for purposes of punishment);
 - ii. Approved by a DHS/ICE supervisor;
 - iii. On a temporary and situational basis, continued only for as long as is justified by threat to the safety or security of the facility, its staff, or resident population; and
 - iv. Documented in both the facility's records and the individual resident's detention file.
2. Special Needs
- a. Separated residents should be provided appropriate accommodations and professional assistance for special conditions as needed (e.g., translation and interpretation services; and medical, therapeutic, or mental health treatment), on an equal basis as residents in the general population.
3. Rooms
- a. Rooms used for purposes of separation must be appropriately sized, well ventilated, adequately lit, heated/cooled as necessary, and maintained in a sanitary condition at all times in accordance with the standards for general population.
 - b. Residents should be able to exercise control over lighting in their rooms and should have access to natural light, if the physical plant allows it.
4. Privileges
- a. Administrative Separation
 - i. Residents in administrative separation should receive the same privileges available to residents in the general population, consistent with safety and security considerations for residents and facility staff. They should be provided opportunities to spend time outside their rooms (in addition to

the required recreation periods), in order to socialize, watch television and pursue other activities.

b. Disciplinary Separation

- i. Residents in disciplinary separation may be subject to more stringent controls, particularly as relates to personal property.

E. Supervisory and Staff Visits

In addition to the direct supervision performed by facility staff:

1. Shift supervisors should review each unit in which separated residents are held and see each resident on a daily basis, including on weekends and holidays.
2. Program staff may visit a separated resident upon the resident's request.

F. Health Care

This subsection incorporates by reference the provisions of the ABA Standards on the Treatment of Prisoners Standard 23-2.8 ("Segregated housing and mental health") that pertain to the monitoring of the mental health of residents in segregated housing.

1. Health care personnel should conduct face-to-face medical assessments at least once each day for separated residents. When an assessment creates cause for concern, it should be followed up with a complete evaluation by a qualified medical or mental health professional, and indicated treatment.
2. Residents with serious mental illness should be placed in a setting within or outside of the facility in which appropriate treatment can be provided.
3. Separation should not be viewed or used as treatment for mental health issues.
4. Residents with serious mental illness should not be placed in solitary confinement.
5. Residents with serious mental illness who are separated should be evaluated outside of their cells by a mental health provider at least once every seven days for routine care as well as to determine whether or not continued separation is or will be detrimental to their mental health.
6. Medical visits should be recorded, and any action taken should be documented in a separate logbook and in the individual resident's detention file.

G. Communications

1. Separated residents should be permitted to write, send and receive letters and other correspondence, in a manner similar to those housed in the facility's general population.
2. Separated residents should have access to telephones in a manner that is consistent with safety and security requirements. They should be permitted to place calls to attorneys, other legal representatives, courts, embassies, consulates, and government offices, including the DHS OIG, DHS CRCL, ICE Joint Intake Center, and ICE's Public Advocate. Telephone access may be denied only as necessary to protect the security of the resident, other residents, or the security or orderly operation of the facility. Denials of telephone use should be documented.

H. Access to Legal Services

1. Separated residents should have access to legal services in accordance with Standard VII. Access to Legal Services, subject only to restrictions necessary to ensure the safety and security of the resident, visitor, or facility staff. A resident's attorney of record should be notified of any separation within 24 hours.
2. Residents separated for their own protection should be provided access to legal research tools and materials. Such residents may be required to use the law library at separate times from the general population. If such residents do not have equal or equivalent access to the law library, legal materials should be brought to them upon request.
3. Denial of access to the law library should be supported by compelling security concerns; for the shortest period required for security; and fully documented in the facility logbook.
4. The facility administrator should notify DHS/ICE every time access is denied, and documentation, including the rationale for denial, should be placed in the detention file.
5. DHS/ICE and facility staff should notify separated residents in advance of legal orientation presentations and provide these residents an opportunity to attend, except when a particular resident's attendance poses a security risk. If a separated resident cannot attend for this reason, designated facility staff should make alternative arrangements to offer a separate presentation and individual consultation to the resident.

I. Visitation

1. Separated residents should retain visiting privileges.
2. Separated residents should ordinarily be able to use the visiting room during normal visiting hours. The facility may restrict or disallow visits for separated

residents only as necessary to protect the security of the resident or to ensure the security or orderly operation of the facility.

3. When visits are restricted or disallowed, a report should be filed with the facility administrator and DHS/ICE, and made part of the resident's file.
4. Separated residents in need of protection, as well as violent and disruptive residents, may be prohibited from using the visitation room during normal visitation hours as necessary to protect the resident(s) or the security or orderly operation of the facility. Visits may be disallowed only as necessary to protect the security of the resident(s) or the security or orderly operation of the facility.

J. Access to Religious Services

Separated residents should be permitted to participate in religious practices in accordance with Standard IX. Access to Religious Services, subject to restrictions necessary to protect the safety and security of the resident, visitor, or facility staff, or to ensure the orderly operation of the facility.

K. Reading Materials (Non-Legal)

Separated residents should have access to reading materials, including religious materials.

L. Recreation

1. Separated residents should be offered at least two hours of recreation and exercise per day, outside their rooms and with other residents, scheduled at a reasonable time, at least seven days per week. Such residents should also have access to radio and television.
2. Separated residents should be provided with weather- appropriate equipment and attire where cover is not provided to mitigate inclement weather.
3. Recreation should be denied or suspended only if the resident's recreational activity may unreasonably endanger safety or security.
4. When a separated resident is deprived of recreation (or any usual authorized items or activity), a written report of the action should be forwarded to the facility administrator. Denial of recreation must be evaluated daily by a shift supervisor.
5. A resident in disciplinary separation may temporarily lose recreation privileges upon a written determination that he or she poses an unreasonable risk to the facility, to himself or herself, or to others.
6. When recreation privileges are suspended, the disciplinary panel or facility administrator should provide the resident with written notification,

including the reason(s) 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.

7. The denial of recreation privileges should be included as part of the regular reviews required for all separated residents. The reviewer(s) should state, in writing, whether the resident continues to pose a threat to self, others, or facility security and, if so, how.
8. Recreation privileges should be denied for more than seven days only in extreme circumstances and with the written concurrence of the facility administrator and a health care professional.
9. The facility should notify DHS/ICE in writing when a resident is denied recreation privileges for more than seven days.

M. Reporting

1. DHS/ICE should collect and compile information regarding each incidence of use, reasons for, and duration of separation in all immigration detention facilities and whether ICE made a timely suitability assessment.
2. DHS/ICE should submit to Congress, and make available to the public, an annual report containing such information no more than 30 days after the end of the reporting period.