

AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
JUDICIAL DIVISION
ATLANTA BAR ASSOCIATION
BAR ASSOCIATION OF SAN FRANCISCO
AMERICAN IMMIGRATION LAWYERS ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association adopts the *ABA Civil Immigration Detention*
2 *Standards*, dated August 2012.
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ABA Civil Immigration Detention Standards
August 2012

4 **I. Introduction**

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

17
18 Despite DHS's civil legal authority, the management of the US immigration detention system is
19 based on a criminal detention model. Most persons in DHS custody—both those held by
20 Immigration and Customs Enforcement (ICE) and the shorter-term detainees held by Customs
21 and Border Protection (CBP)—are housed in jails and jail-like facilities, which are mostly
22 administered according to American Correctional Association (ACA)-based standards that apply
23 to persons awaiting criminal trials.

24
25 DHS/ICE has recently made it a priority to transform the immigration detention system from a
26 criminal model into one that reflects its civil detention authority. The American Bar Association
27 (ABA) civil immigration detention standards set forth below are intended to provide a tool that
28 will guide DHS in the transition to a comprehensive civil detention system that does not
29 primarily make use of jails and jail-like facilities to house the persons in its custody. Although
30 the ABA recognizes the logistical and financial challenges involved in the expeditious and
31 complete transformation to a civil detention system, it nonetheless urges DHS to adopt these
32 standards quickly and to begin to reconstitute its infrastructure and reform its system based upon
33 these standards.

34
35 In 2008, DHS/ICE released extensive performance-based national detention standards (PBNDS)
36 based on ACA standards for pre-trial detention. In February 2012, ICE released its revised
37 PBNDS 2011, which continue to be based on ACA standards for pre-trial detention. In addition,
38 DHS/ICE has developed civil detention principles (not standards), which have been incorporated
39 into its statements of objectives (SOOs) used in soliciting bids for select new detention facilities.

40
41 The ABA civil immigration detention standards are not intended to be an exhaustive compilation
42 of all the standards that might apply to persons subject to DHS custody. Rather, they are intended
43 to provide DHS with a blueprint for developing civil detention standards, particularly those that
44 implicate access to justice and other ABA priorities. The ABA standards are intended to assist

45 DHS/ICE in its “real time” efforts to reform the US immigration detention system. The ABA
 46 standards should be used by DHS/ICE to update the PBNDS and to guide its comprehensive
 47 transition to a civil detention system.

48
 49 The ABA standards are meant to apply to persons subject to DHS custody, while recognizing the
 50 need to take more restrictive measures for the limited percentage of residents who may represent
 51 a danger to others or to themselves. The ABA offers these standards in order to minimize the risk
 52 of civil and human rights violations against immigration detainees. Facilities that do not meet
 53 the standards should not house DHS detainees.

54

55 **II. GUIDING PRINCIPLES**

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

58

59 A. The ABA civil immigration detention standards should exceed the constitutional
 60 protections guaranteed to other populations in custody, and should not be interpreted, in any
 61 particular, to provide less generous standards or protections than those set forth in the detailed
 62 DHS/ICE PBNDS and other standards set forth in the laws, regulations and sections of model
 63 standards referenced in this document. The ABA civil immigration detention standards
 64 incorporate by reference the following, with supplemental provisions incorporated by reference
 65 within the standards:

66

67 1. Part VI of the ABA Standards on the Treatment of Prisoners, which addresses
 68 health care.

69

70 2. Part X of the ABA Standards on the Treatment of Prisoners, which addresses
 71 facility administration and staffing.

72

73 3. ICE’s PBNDS 2011 Terminal Illness, Advance Directives and Death standard.

74

75 4. 28 C.F.R. § 115, which implements the Prison Rape Elimination Act of 2003
 76 (PREA), P.L. 108-79, codified at 42 U.S.C. §§ 15601-15609.

77

78 B. The ABA civil immigration detention standards should apply to all residents in DHS
 79 custody, with the recognition that it will be necessary to classify residents based on the risk they
 80 present to others and to take more restrictive measures for persons (subject to appropriate
 81 procedural protections) who may represent a present danger to others or to themselves.

82

83 C. Any restrictions or conditions placed on noncitizens — residents or others — to ensure
 84 their appearance in immigration court or their actual removal should be the least restrictive, non-
 85 punitive means necessary to further these goals, and decisions to continue to detain should be
 86 regularly revisited.¹

¹The 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

- 87 D. Residents should not be held in jails or jail-like settings. DHS/ICE should normalize
88 living conditions in all detention facilities to the greatest extent possible. Civil detention
89 facilities might be closely analogized to “secure” nursing homes, residential treatment facilities,
90 domestic violence shelters, or in-patient psychiatric treatment facilities. Such facilities should
91 have ample common space, freedom to move within the facility, extended access to indoor and
92 outdoor recreation, and abundant opportunities to relate to other residents and to persons outside
93 the facility. The level of security should be commensurate with propensity to institutional
94 violence and any security or safety concerns related to the residents in individual facilities.
95
- 96 E. Access to legal services is critical to a fair and efficient immigration removal and
97 detention system. Authorities should facilitate access to legal and consular services, legal
98 materials and information, correspondence, and legal orientation presentations.
99
- 100 F. Facilities should allow for residents to seek and receive legal advice and medical and
101 psycho-social care; conduct legal research and otherwise participate in the preparation of their
102 cases; wash and wear their own clothes; and practice their faith(s).
103
- 104 G. A noncitizen should only be detained based upon an objective determination that he or
105 she presents a threat to national security or public safety or a substantial flight risk that cannot be
106 mitigated through parole, bond, or a less restrictive form of custody or supervision. As a general
107 rule, minors and pregnant or nursing women should not be detained by DHS/ICE. References to
108 these groups in the standards should not be interpreted to mean otherwise.
109
- 110 H. DHS/ICE should vigorously oversee its contractors and its own staff, and should bear
111 ultimate responsibility for ensuring adherence to these standards, for safeguarding and protecting
112 the rights of all residents, and for decisions related to release, classification, and detention of
113 persons subject to its jurisdiction.
114
- 115 I. All facilities in which persons are detained should be subject to direct review and
116 oversight by DHS. In addition, independent observers should be permitted to monitor conditions
117 in facilities, to assess compliance with these standards, and to issue public reports with findings
118 and recommendations.
119
- 120 J. Facilities should respect the rights and dignity of all residents. No resident should be
121 subject to cruel, inhuman, or degrading treatment or conditions.
122
- 123 K. Congress should enact legislation to implement and fund compliance with these
124 standards.
125

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.

126 **III. CLASSIFICATION AND PLACEMENT PROCESS**127 **A. Least Restrictive Alternative**

128 1. The intake, classification, and placement process should be used by DHS/ICE to
129 determine whether a noncitizen should be released, placed in an alternative-to-detention (ATD)
130 program or detained.

131 2. These standards presume use of the least restrictive means available to prevent
132 flight and otherwise to meet the limited underlying purpose of detention.

133 **B. Classification and Placement**

134 1. If detention is necessary, DHS/ICE should consider all of the residents' relevant
135 circumstances, risks, and needs, including but not limited to the following, in determining
136 custody classification and detention location:

137 a. Location of the resident's family, social and cultural support systems, and legal
138 counsel;

139 b. Prior criminal history and demonstrated propensity for institutional violence, risk
140 of flight, and security needs;

141 c. Medical requirements, mental health needs, and handicapping conditions;

142 d. Other special conditions or vulnerabilities, e.g., if a resident is pregnant or has
143 custody of minor children; and

144 e. Availability of special programming.

145 2. The classification process should be systematized and should be validated by
146 experts independent of DHS.

147 a. Assessment of residents for placement within the system should be performed
148 prior to assigning the resident to a specific facility.

149 b. The assessment should be reviewed by facility staff within 24 hours of the
150 resident's arrival at the receiving facility.

151 c. Whenever it is determined that the placement is inappropriate, DHS/ICE should
152 be notified immediately and should place the resident in a more appropriate
153 facility.

154

155 3. DHS/ICE should rate and classify all facilities used to house those in its custody
156 based on their appropriateness and ability to accommodate residents of different classifications.
157 Facilities should be rated according to their suitability to house persons with different security
158 and safety classifications, medical and mental health needs, and other relevant factors like age
159 and gender.

160

161 4. Noncitizens should not be presumed to be dangerous or prone to flight in the
162 absence of credible information establishing objective risk factors.

163

164 **C. Facility Intake Process**

165 1. The intake process should include an initial medical, dental, and mental health
166 screening that occurs prior to placement of the resident in a detention facility, and in no event
167 more than 12 hours after arrival. This screening should be performed by a qualified medical
168 professional.

169 2. Each resident should receive a comprehensive medical and mental health
170 evaluation by qualified professionals no later than 14 days after admission to a facility, and a
171 thorough medical and mental health assessment periodically thereafter, in accord with
172 community health standards. Unless a dental emergency requires more immediate attention, an
173 examination by a dentist or trained personnel directed by a dentist should be conducted within 90
174 days of admission.

175 3. All facilities should follow a uniform, validated protocol for screening and
176 assessing residents that is designed to identify any issues requiring immediate or special
177 attention, such as

178 a. Any physical illness, substance withdrawal, or communicable or chronic
179 disease that could require medical treatment;

180 b. Any mental health conditions that require treatment, make the resident a
181 risk to himself or herself or to others, or make the resident especially
182 vulnerable in a detention setting.

183 4. Should a screening or assessment indicate that fuller medical or mental health
184 evaluation is required, such evaluation should be conducted in a facility that can provide
185 comprehensive medical and mental health services.

186 5. Upon arrival at the facility, residents should be provided with a DHS/ICE
187 Handbook and a facility-specific handbook that describe rules and procedures as well as resident
188 rights under these standards, each in a language the resident understands. In-person assistance
189 should be provided to persons who are illiterate or have disabilities. In addition to written
190 materials, residents should be instructed on key points in the handbooks in a language they can
191 understand.

192 **D. Review of Placements**

193 1. In addition to assessing individuals in the initial intake process, DHS/ICE should
194 regularly review its placement and classification decisions to ensure that residents are

195 a. Detained for the minimum time necessary;

196 b. Not detained indefinitely;

197 c. Reclassified and, if appropriate, transferred to another kind of facility; and

198 d. Released if detention is no longer appropriate.

199 2. The initial review of a resident’s classification and placement should be
 200 performed no more than four weeks after a resident has entered a facility. An earlier review of
 201 classification and placement should be triggered by factors including a change in flight risk (such
 202 as eligibility for relief, attainment of legal counsel, or ability to post bond) or a change in risk of
 203 harm to the resident due to classification and placement.

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

206

207 **IV. PHYSICAL PLANT AND ENVIRONMENT**

208 **A. Location of Facilities**

209 Facilities should be located near the following:

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

214 **B. Physical Plant**

215 The physical plant of a facility should:

- 216 1. Be clean and wellmaintained.
- 217 2. Be equipped with appropriate heating, air conditioning, and ventilation systems:
 218 residents at risk of heat-related illness or harm should be provided necessary access to cooled
 219 environments during heat emergencies;
- 220 3. Allow for privacy, freedom of movement, and access to outdoor recreation;
- 221 4. Be constructed and maintained so as to minimize noise to residents and maximize
 222 access to natural light;
- 223 5. Be smoke-free and compliant with the Americans With Disabilities Act;
- 224 6. Be regularly inspected to ensure compliance with all relevant health, safety, and
 225 building codes;
- 226 7. Include sufficient and appropriate space to support the programs and services
 227 referenced in these standards; and
- 228 8. Be secured by controlled access and perimeter walls if necessary, but not by
 229 traditional prison-like towers, fences, or barbed or concertina wire. A more secure perimeter
 230 may be necessary for facilities or portions of facilities that detain populations classified as having
 231 a propensity for institutional violence or otherwise presenting a security or safety risk.

232

233 **V. DAILY LIVING CONDITIONS**

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

235

236 **A. Privacy, Personal Possessions, and Physical Space**

237 1. The physical dimensions of residential quarters should be adequate to ensure
238 compliance with fire and safety codes.

239 2. Facilities should provide each resident with access to:

240 a. A bed and mattress raised off the floor;

241 b. Blankets and fans, as appropriate;

242 c. Sufficient storage with a lock controlled by the resident to afford access to
243 personal possessions in the living area;

244 d. Private showers and toilets, where practicable and appropriate, based on
245 security levels;²

246 e. Adequate light and control over lighting, i.e., residents should be able to
247 turn on a light in their sleeping quarters at will and turn off lights that
248 might impede sleep;³ and

249 f. Abundant natural light and views of the outdoors.

250 3. An inventory of personal property should be provided at intake and a copy of the
251 inventory should be provided to the resident. Additionally, the resident should be provided with
252 copies of identity documents, including passports. Otherwise lawful contraband that is taken
253 from a resident should be stored securely and immediately returned upon transfer or release.
254 Residents should be permitted to retain in their possession non-contraband personal property.

255 4. Residents should have access to copies of all materials required for legal
256 proceedings, including passports and other official documents, held by DHS/ICE.

257 5. Facility staff should provide storage for medications or special dietary needs, and
258 should monitor compliance with prescription and other medication regimens. There should be a
259 presumption that residents are permitted to keep their medications in their possession.

260 6. Residents should be allowed to wear their own clothing and should not be subject
261 to clothing restrictions apart from those deemed strictly necessary for security.

262 7. If the resident does not have clean or adequate clothing, the facility should
263 provide him or her with clean, gender-appropriate, well-fitting civilian clothing and underwear,
264 in good condition, with some variety (i.e., not uniforms) and suited to the season and to the
265 facility temperature.

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.

- 266 8. Residents should be afforded uninterrupted quiet time after a certain hour.
- 267 9. Facility staff should not conduct more than three headcounts of residents per day,
268 except where warranted for special populations such as violent, mentally ill, or elderly residents
269 or in extraordinary circumstances. Headcounts should be organized as check-ins and should not
270 involve a lock-down of all residents in their sleeping quarters.
- 271 10. Residents should be afforded access to their personal funds and banking services,
272 as appropriate.

273 **B. Communal Space**

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

297 **C. Food Service**

- 298 1. Residents should be provided adequate and nutritionally balanced diets.
- 299 a. Diets should be reviewed at least quarterly by food service personnel and
300 at least annually by a qualified dietician.
- 301 b. Diets should meet U.S. recommended daily allowances as certified by a
302 qualified dietician.

- 303 c. Residents should be served three meals every day, at least two of which
304 should be hot meals.
- 305 d. The dining schedule should provide for no more than 14 hours between
306 the evening meal and breakfast.
- 307 e. Clean drinking water should be available at all times.
- 308 f. The diverse nutritional needs of residents of different ages, levels of
309 activity, physical condition, gender, religious affiliation, and medical
310 needs (including pregnant women and nursing mothers) should be met.
- 311 g. The facility should accommodate the ethnic and religious diversity of the
312 facility's population when preparing menus.
- 313 2. Residents, staff and others should be protected from harm by the application of
314 sound security practices in all aspects of food service and dining room operations.
- 315 3. Residents, staff and others should be protected from injury and illness by
316 adequate food service training and the application of sound safety and sanitation practices in all
317 aspects of food service and dining room operations.
- 318 4. Food should be served at appropriate temperatures.
- 319 5. Food service areas should be clean and well lighted.
- 320 6. Dining room facilities and operating procedures should provide sufficient space
321 and time for residents to eat meals in a relatively relaxed, unregimented atmosphere.
- 322 a. The table arrangements should provide for unassigned seating and ease of
323 movement.
- 324 b. The dining room should have the capacity to permit each resident a
325 minimum of 40 minutes dining time for lunch and dinner, and 30 minutes
326 for breakfast.
- 327 c. Residents should retain sufficient access to dining room facilities outside
328 of regular meal times to enable cleaning and/or disposal of food-related
329 items consumed outside of dining areas.
- 330
- 331 7. Food service facilities and equipment should meet established governmental
332 health and safety codes, as documented by relevant agencies and experts independent of DHS.
- 333 8. Food service areas should be continuously inspected by food service staff and
334 other assigned personnel in accordance with established health and safety guidelines.
- 335 9. Therapeutic medical diets and supplemental food should be provided as
336 prescribed by appropriate medical personnel at no cost to the residents.
- 337 10. Special diets and ceremonial meals should be provided at no cost to the residents
338 for residents whose religious beliefs require adherence to religious dietary laws.

339 11. Where practicable, the facility should permit the private storage of food for
340 religious or medical needs, and should permit residents to prepare meals for special cultural and
341 religious occasions.

342 12. Food should never be used for reward or punishment.

343 13. The food service areas should be subject to regular inspection by independent and
344 licensed entities.

345 **D. Freedom of Movement and Recreation**

346 1. Residents should be permitted the maximum amount of freedom of movement
347 within the facility, both indoors and outdoors, consistent with the safety and security of residents
348 and staff.

349 a. Except where necessary to ensure safety and security, residents should be
350 able to move freely and without escort during daylight hours within and
351 between the areas designated for housing and recreation.
352

353 b. Reasonable access should be afforded to general reading and law libraries
354 in accordance with Standard VII. Access to Legal Services.
355

356 c. Access to medical facilities and medical treatment should be available
357 upon request in accordance with Standard VIII. Access to Health Care
358 Services.
359

360 d. Restraints should not be applied to residents when medically
361 contraindicated, including during labor and postpartum.
362

363 2. Residents should be permitted extended access to indoor and outdoor recreational
364 and exercise activities on a daily basis.

365 a. Indoor recreational space should permit aerobic activities and games such
366 as table tennis and other organized events.
367

368 b. The outdoor recreation area should be located outside a building, and
369 should include grass, shade and shelter from rain, sitting areas, exercise
370 equipment, and space for sports. Exercise equipment should be
371 maintained in a safe condition.
372

373 c. Residents should have free access to outdoor recreation throughout the
374 day, weather permitting.
375

376 d. Residents participating in outdoor recreational activities should have
377 access to drinking water and toilet facilities.
378

379 e. All residents, including residents in administrative or disciplinary
380 separation, should have access to outdoor and indoor recreation.
381

- 382 f. Common rooms should offer and be large enough to accommodate board
 383 games, television, and opportunities for residents to engage in independent
 384 and small-group recreational activities.
 385
- 386 g. Facilities should provide residents with opportunities to access
 387 programmatic activities consistent with their length of stay. Residents in
 388 custody for 14 days or more should be able to access educational, skills-
 389 development, English language, programs required for compliance with
 390 court orders or family reunification case plans, and other programs.
 391
- 392 h. Facility staff should provide monitoring of the recreational areas to the
 393 extent necessary to ensure the residents' safety.
 394
- 395 i. Access to outdoor recreation should not be denied as a disciplinary
 396 measure.
 397

398 **VI. COMMUNICATIONS**

399 **A. Correspondence and Other Mail**

- 400 1. Residents should be permitted to correspond with families, friends, legal
 401 personnel, the news media, and US and foreign government and consular officials.
- 402 2. The amount and content of correspondence that residents send at their own
 403 expense should not be limited, except to protect public and facility safety and security.
- 404 3. The facility should provide writing paper, writing implements, and envelopes at
 405 no cost to the residents.
- 406 4. Indigent residents should receive
- 407 a. A postage allowance for personal correspondence; and
- 408 b. Necessary postage for special or legal correspondence.
- 409 5. The facility should provide a postage allowance to all residents if the facility does
 410 not have a system for residents to purchase stamps.
- 411 6. Incoming and outgoing mail, except for special or legal correspondence, should
 412 be opened by facility staff only for purposes of inspection for contraband.
- 413 7. Incoming and outgoing mail, except for special or legal correspondence, should
 414 be read or withheld by staff only with the permission of the director of the facility and as
 415 necessary to protect public and facility safety and security. Residents should be promptly
 416 notified in writing when mail is withheld in whole or in part. The facility should provide a
 417 process by which a resident may appeal to federal officials a decision by the facility to withhold
 418 mail.
- 419 8. Special or legal correspondence should be opened by facility staff only in the
 420 presence of the resident, and should not be read by facility staff.

421 9. Residents should be permitted to receive packages, including items ordered
422 through the mail, except as necessary to protect safety and security. Facility staff should open
423 packages only for purposes of inspection for contraband.

424 10. The facility should process incoming and outgoing mail as expeditiously as
425 possible, and in no event less than once per day.

426 11. Legal personnel should be permitted to deliver documents to residents other than
427 by regular mail in accordance with Standard VII.C.2.

428

429 **B. Telephonic and Other Real-Time Communications**

430 1. This subsection applies to telephones and non-telephonic forms of real-time
431 communication, such as videoconferencing and e-mail.

432 2. Residents should have reasonable and equitable access to modestly priced
433 telephone services. Charges imposed for phone use should be competitive with rates charged to
434 the public.

435 3. Residents with hearing or speech disabilities should be accommodated in order to
436 permit reasonable access to telephone services, e.g., with a TTY device or accessible telephone.
437 Residents with speech or hearing disabilities should be permitted extra time for calls.

438 4. Residents should be able to make no-cost calls and send e-mail (if the receiving
439 entity allows), and receive e-mail from the following as necessary:

- 440 a. The EOIR (including the BIA), and immigration courts;
- 441 b. Federal, state, and family courts in which the resident is or may become
442 involved in a legal proceeding (including proceedings involving parental
443 rights);
- 444 c. Legal representatives and personnel;
- 445 d. Embassy and consular officials;
- 446 e. DHS Office of Inspector General (OIG);
- 447 f. The UNHCR for asylum-seekers and stateless residents;
- 448 g. Federal, state, and local government offices to obtain documents relevant
449 to the resident's immigration case or documents necessary to comply with
450 court orders or arrangements for their children;
- 451 h. Family members or other individuals assisting with the resident's
452 immigration proceedings;
- 453 i. Immediate family or others in personal or family emergencies or where a
454 compelling need arises; and
- 455 j. DHS, including its Joint Intake Center and the ICE Public Advocate.

456

457 5. Residents should have access to telephone services for a minimum of 30 minutes
458 per resident per day, at reasonable and appropriate times, including during regular business hours
459 as necessary. Residents with speech or hearing disabilities should be provided with sufficient

460 extra time to use the telephone. In addition to this 30-minute minimum, residents should also be
461 permitted to make calls to and receive calls from legal counsel without time restriction, unless
462 such restriction is deemed necessary for reasons of heightened security.

463 6. Indigent residents should be provided with a telephone allowance for calls to
464 persons other than those identified in Standard VI.B.4.

465 7. Telephones should be located in convenient and private areas sufficiently
466 distanced from television and other activities that might be distracting.

467 8. Telephone calls should be presumptively private and should be monitored or
468 recorded only as necessary to assure safety and security. Telephone calls with legal
469 representatives and personnel should be treated as confidential and should not be monitored or
470 recorded, and should otherwise be subject to the provisions in Standards VII and XV, relating to
471 communications with legal personnel and confidential communications with external monitoring
472 agencies.

473 9. Residents should be informed as part of a comprehensive orientation and shown
474 (thereafter) in-person how to request private areas for telephone calls and other confidential
475 communications with legal representatives, caseworkers, or family courts.

476 10. Telephones should be maintained in good working order. Facility staff should
477 inspect the telephones daily, promptly report out-of-order telephones to the repair service, and
478 ensure that repairs are completed quickly. Out-of-order telephones should not excuse the facility
479 from providing telephone access required by other provisions of these Standards.

480 11. Residents who are held separately from others should not be denied access to
481 telephone services.

482 12. Residents should have access to the internet for at least one hour every three days,
483 with sufficient, additional time for legal research, and should have access to e-mail in order to
484 communicate with legal personnel and their families, subject to reasonable security-related
485 restrictions and limitations. The confidentiality of legal communications should be respected.

486 13. Residents should have access to a telephone and corresponding telephone number,
487 where they can receive incoming calls from criminal or family courts in order to comply with
488 required telephonic appearances.

489 14. Residents should have easy access to notaries public. A notary should be
490 available to residents every day.

491

492 **VII. ACCESS TO LEGAL SERVICES**

493 **A. Access to Legal Services**

494 1. Residents should be able to meet with current or prospective legal representatives
495 and other legal personnel, court personnel, witnesses, translators, family members and others
496 who can assist them in the preparation of their cases (including the UNHCR), and embassy and
497 consular officials.

- 498 2. Residents should also have access to the legal system including access to
499 criminal, family, and juvenile courts; parole and probation hearings; and administrative
500 processes and proceedings in which they have an interest.
- 501 3. No resident with legal representation should be unwillingly transferred to another
502 facility except in extremely limited circumstances related to the security, safety, health or well-
503 being of the resident, other residents, or facility staff. DHS/ICE should document the necessity
504 for the transfer beforehand and provide concurrent notice of the reassignment to the attorney of
505 record. Such notice should include contact information for resident at the new facility, as well as
506 description of the mode of transfer (e.g., bus, airplane, etc.) and expected time of arrival.
- 507 4. There should be meaningful and timely access to legal personnel, including but
508 not limited to the following:
- 509 a. Legal personnel should have the ability to visit, call via phone or web- or
510 videoconference, or communicate electronically with residents at a minimum of
511 12hours a day, including in the evening and on weekends. Residents should be
512 notified of the hours and rules for legal visitation; and information should be
513 posted in the waiting areas, visiting areas, and housing areas. Facility staff should
514 consider requests for legal visitation outside of normal hours.
515
- 516 b. Legal counsel should not be required to provide advance notice of meetings, and
517 any restrictions on advance notice for meetings should be minimal and based
518 solely on maintaining facility security. The time between the arrival at the facility
519 of a legal representative or translator and a scheduled meeting with a resident
520 should not exceed 30 minutes.
521
- 522 c. Sufficient private rooms should be set aside (including on short notice) to
523 accommodate private communications, including video and telephonic
524 communications between residents and legal personnel. These meeting rooms
525 should allow legal counsel to review written documents with resident clients, and
526 should not include Plexiglas or other barriers separating legal counsel from the
527 residents, except in extraordinary cases involving safety risks.
528
- 529 d. Meetings should take place in a setting where conversation cannot be overheard
530 or recorded by staff or other residents. Facility staff should not be present in the
531 confidential area during the meeting unless legal personnel so request. In such
532 cases, the meeting should be afforded the greatest degree of privacy possible,
533 including through visual but not auditory monitoring.
534
- 535 e. Post-meeting searches may take place according to the provisions in Standard X.
536 Visitation.
537
- 538 5. Legal personnel should be permitted to take laptops and smartphones into the
539 courtroom and to visits with clients. The facility may opt to provide its own equipment to legal
540 representatives upon an individualized determination of risk.

541 6. Facilities should house or be located near immigration court rooms to the greatest
542 extent possible in order to allow in-person court hearings. In no event should videoconferencing
543 should be used for merits hearings. Facilities should provide transportation to residents to allow
544 for in-person merits hearings at the relevant immigration court.

545 **a.** If the facility houses a courtroom, it should comply with requirements set
546 forth by EOIR, and should enable residents to have private hearings
547 outside the presence of other residents.

548 7. Residents should have no-cost access to telephones, e-mail and video technology
549 in order to communicate with legal representatives, according to the provisions under this section
550 and Standard VI.B Telephonic and Other Real-Time Communications. Legal communications
551 may not be monitored or recorded. Legal personnel should be able to leave messages for
552 residents, which should be delivered promptly.

553 8. Access to interpreters, translators or other services required to provide meaningful
554 access to legal services should be provided on the same basis as access to legal personnel.
555 Telephonic and video access to interpreters should be permitted for residents who speak less
556 common languages and for whom local interpretation services are not readily available. Legal
557 personnel should be permitted to bring interpreters of their choice to meet with residents,
558 including interpreters from the law office who may or may not be on a facility-approved list.

559 9. ICE should ensure that each facility posts the list of local free legal services
560 providers, updated regularly by EOIR. The list should be posted in resident housing units, near
561 telephones, and in other appropriate areas, and copies should be made available upon request.

562 **B. Access to Legal Materials and Information**

563 1. Residents should have access to updated legal materials including current relevant
564 codes, regulations, court rules, self-help materials, and legal forms. Sufficient private space
565 should be set aside to enable residents to conduct legal research.

566 2. Each facility should maintain a law library that includes computer terminals with
567 access to legal materials. The latter may be provided via on-line services like LexisNexis or
568 Westlaw. Instruction on how to use computers, including on-line services, should also be
569 provided. The law library should include updated editions (in hardcopy) of the relevant codes,
570 regulations, operating instructions, case reporters, treatises, self-help materials, model pleadings,
571 court procedures, and other legal materials.

572 3. Residents who are unable to access legal resources or prepare for immigration or
573 other proceedings because of language or reading limitations should have access to alternative
574 services, including confidential translation services.

575 4. Officials should not read, alter, or destroy a resident's legal materials. Officials
576 may inspect legal materials for physical contraband.

577 **C. Access to Legal Correspondence**

578 1. Residents should be permitted to send and receive special and legal
579 correspondence confidentially, including by mail, facsimile, and e-mail (with reasonable
580 limitations), and be provided access to copy machines, postage and notary services, according to
581 this Standard and Standard VI.A Correspondence and Other Mail.

582 2. Facility staff should provide for the privacy of correspondence between residents
583 and legal representatives. Facilities should afford the means for secure delivery of materials and
584 documents from legal personnel to residents, including by mail, personal visits, and drop-off.

585 3. Under no circumstances should legal mail be read by anyone other than the
586 intended recipient. Legal mail may be searched only for physical contraband, and searches
587 should be conducted only in the presence of the resident to or from whom the letter is addressed.

588 **D. Legal Orientation Presentations**

589 1. Facilities should permit representatives from non-governmental organizations
590 (NGOs) and nonprofit legal services organizations to conduct confidential legal orientation
591 presentations, including group presentations and meetings with one or more residents, upon
592 request. Legal orientation presentations may be pre-representational or take place after
593 representation has been secured. They should include information regarding immigration laws
594 and processes, child custody matters, obtaining travel documents, and arranging for a child to
595 join a parent in the event of deportation. Legal orientation presentations should be afforded the
596 same confidentiality as legal meetings under this Standard.

597 2. Legal orientation presentations should be permitted to take place in person or via
598 web-or videoconference. Facilities should provide adequate meeting space for in-person
599 presentations.

600 3. Legal orientation presentations should be scheduled multiple times per week as
601 needed to accommodate residents. Requests for presentations should be granted to the greatest
602 extent practicable. Facility staff should publicize legal orientation presentations in advance, with
603 accurate information about the content and provider of the presentations, and permit residents to
604 participate as often as is practicable.

605 4. Presenting organizations should be permitted to provide written materials
606 regarding immigration court procedures and the availability of legal information, relief from
607 removal, and other relevant information, in accordance with Standard VII.B Access to Legal
608 Materials and Information.

609 5. Facilities should regularly show the ABA Know Your Rights video on video
610 monitors, and also make it available in the law library on demand.

611 6. Facility staff should also provide a comprehensive orientation to all new residents,
612 covering, inter alia, the programs, physical plant, rules, procedures, and policies of the facility.

613 **VIII. ACCESS TO HEALTH CARE SERVICES**

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

618 1. Health care screening should be performed only by medical professionals, not
 619 security staff. Healthcare providers should be fluent in the languages predominant among the
 620 resident population.

621
 622 2. Residents should not be sedated in order to facilitate their cooperation with
 623 removal from the country.

624 3. Restraints should not be used for patients in labor or post-partum, or when
 625 medically contraindicated. Residents should not be examined while they are in restraints.

626 4. A standard DHS/ICE electronic medical record will be used at all detention
 627 facilities.

628 5. Female health and hygiene needs should be fully met. Provision for these needs
 629 should include a choice of feminine hygiene products.

630 6. Residents should not be charged fees for necessary health care services. Required
 631 medications should be included in the facility formulary, whether or not they are available for
 632 purchase by residents, to assure access to necessary medical care.

633 7. Residents should always be told the name and the dosage of any medication they
 634 are given, and should be permitted access to a written record of the same, which residents can, if
 635 they so choose, permit legal personnel to see.

636 8. No resident should be allowed to provide health care evaluation or treatment to
 637 any other resident.

638

639 **IX. ACCESS TO RELIGIOUS SERVICES**

640 **A. Right to Practice Religion**

641 1. Residents of all faiths should have reasonable and equitable opportunities to
 642 attend religious services and engage in practices consistent with their faith traditions. In
 643 accordance with the Religious Freedom Restoration Act of 1993 and the Religious Land Use and
 644 Institutionalized Persons Act of 2000, DHS/ICE and facility policies should avoid imposing a
 645 substantial burden on residents' religious exercise except where the "least restrictive means
 646 available" is employed to serve a "compelling government interest."⁴

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.

647 2. No matter where residents are held they should be afforded the protections of
 648 federal law. In the event that a resident is held temporarily in a hospital or a separate unit
 649 because of a health emergency or security-related incident, he or she should continue to have
 650 access to religious activities and practices to the extent compatible with medical and security
 651 requirements.

652 3. Attendance at all religious activities should be voluntary and religious personnel
 653 at the facility should employ a non-proselytizing model of pastoral care.

654 4. All religions represented in a detention population should have equal status
 655 without discrimination based on the resident's race, ethnicity, religion, national origin, gender,
 656 sexual orientation, disability or health status.

657 5. Religious service providers should have reasonable access to facilities and
 658 residents. Residents of faiths not represented by religious services staff should be assisted at
 659 their request in contacting external clergy or religious service providers. Facilities should allow
 660 entry of religious services providers' interpreters. Visits from religious personnel should not
 661 count against a resident's visitor quota.

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

666 **B. Religious Services Coordinator**

667 1. Each facility should have a professional Religious Services Coordinator — a
 668 position that should be held by non-security personnel — or a chaplain who should facilitate
 669 arrangements for religious services and for pastoral visits by clergy and other representative of
 670 the residents' faith(s).

671 2. The Religious Services Coordinator should have a basic knowledge of different
 672 religions and should ensure equal status and protection for all religions. A chaplain should have
 673 the minimum qualifications of clinical pastoral education or specialized training, and
 674 endorsement by the appropriate religious-certifying body.

675 3. In lieu of these qualifications, the facility administrator may accept adequate
 676 documentation of the recognized religious or ministerial position in the chaplain's faith
 677 community.

678 4. Religious Services Coordinators and chaplains should have the necessary training
 679 to connect residents with a broad range of religious services and be willing and able to arrange
 680 religious services for multiple faith traditions.

681 **C. General Requirements for Access to Religious Services**

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

685 2. Upon entry to a facility, residents should be informed of the availability of
686 religious services, and how to request and access those services. Each resident should be asked
687 to designate any religious preference, or none, during intake processing.

688 3. Staff, contractors and volunteers should not disparage the religious beliefs of
689 residents, nor coerce or harass residents to change religious affiliation.

690 4. A resident should be permitted to change his or her religious preference
691 designation at any time by notifying the chaplain or religious services coordinator in writing.
692 The change should be effected in a timely fashion.

693 5. Residents should not be required to remove their religious headwear for intake
694 pictures, where the headwear does not obscure facial features.

695 6. Residents should be permitted to maintain their hair, including beards and facial
696 hair, according to their faith practices and should be provided with personal hygiene items
697 necessary for the practice of their religion(s).

698 7. Facility records should reflect the reasons for any limitation or discontinuation of
699 a religious practice. A resident may submit a request for information concerning the reason for
700 the denial of access to religious activities, facilities or meals. A copy of the request and a
701 response to the request and the reason for denial should be placed in the detention file.

702 8. The ceremonial use of items and legal substances such as sacramental wine or
703 incense that would otherwise be considered contraband inside a civil detention environment
704 should be permitted under strict supervision. These substances should be dispensed under strict
705 supervision for the sole and specific purpose of a religious ritual. The Religious Services
706 Coordinator or chaplain should inform the facility staff of the procedures for procuring, storing,
707 and using the substance or item in authorized services. The use of such items should be
708 accomplished in a manner that avoids unnecessary and potentially disruptive confiscation of
709 essential sacred elements.

710 9. Facilities should devote sufficient resources to purchasing and soliciting
711 donations of religious texts and literature from multiple faith traditions, including but not limited
712 to Korans and Bibles in versions acceptable to different Christian and Jewish groups (including
713 the Hebrew Bible). This literature should be available in diverse languages. Residents should
714 have access to multi-lingual religious libraries provided by the religious services program, as
715 well as access to electronically available religious resources.

716 10. Facilities should accept religious materials such as rosaries, prayer shawls, prayer
717 rugs or kurda provided by outside sources. The religious services coordinator will review all
718 donated materials in light of need, safety and security considerations prior to their use or
719 distribution.

720 11. Religious volunteers' background checks should be completed within two weeks.
721 DHS should aim to clear religious personnel who are stationed inside facilities within one month.

722 **D. Marriage, Illness, and Death Issues**

723 1. Residents who have applied to and received approval from the ICE Field Office to
724 marry should be permitted to do so. On-site marriage facilities should conform to relevant state
725 law requirements.

726 2. The Religious Services Coordinator should ensure that during intake residents
727 indicate whether they have religious preferences regarding health care choices and disposition of
728 remains.

729 3. The Religious Services Coordinator should coordinate appropriate religious
730 ceremonies and rituals at the time of a resident's serious illness or death in accordance with the
731 resident's preferences, and following discussion with the resident's family. The coordinator
732 should advise the facility administrator regarding religious factors that may influence decisions
733 concerning the performance of autopsies and proper disposition of remains. See Standard XII.G
734 Serious Illness and Death in Custody.

735

736 **X. VISITATION**

737 **A. In-facility Visitation**

738 1. Residents should be housed within a reasonable distance of their family, social
739 and cultural support systems, or usual residence. ICE should promote regular visitation by family
740 members and friends.

741 2. In the absence of security concerns, residents should be permitted to contact
742 family members to arrange for visitation and in advance of a transfer to a remote detention
743 facility.

744 3. When more than one family member is held in immigration custody, DHS/ICE
745 should facilitate visitation between them and, if requested by the residents, should reunite them.

746 4. Facilities should permit contact visitation. Glass partitions, tables, or other
747 physical barriers should not prevent contact between residents and visitors during contact visits.
748 For example, handshaking, embracing, and kissing should be permitted at least at the beginning
749 and end of the visit. Non-contact visits may be required only following an individualized
750 determination that a contact visit poses a danger to security or safety. Such non-contact visits
751 should ordinarily be in person absent an individualized determination that an in-person visit
752 would pose a danger. Residents or visitors may request non-contact visits. Each restriction of
753 visits should be documented.

754 5. Videoconferencing is not an acceptable substitute for contact visitation.
755 Videoconferencing may be used to enable contact with family and friends who are distant or
756 have difficulty traveling to the facility, but should not be used as the form of visitation provided
757 to visitors who are physically at the facility.

758 6. Visitors should be permitted to visit every day including holidays, and during
759 early morning, evening, and weekend hours. Visiting hours and rules should be standardized and
760 communicated to residents in a language or manner they understand. Visiting hours and rules
761 should be made available to the public including by phone, TTY, and internet, in English,
762 Spanish, and other languages commonly spoken by residents and visitors.

763 7. Time limits for visits should be generous, at least two hours ordinarily, with
764 additional time for visitors who must travel significant distances or are unable to visit frequently.
765 Visitors should not be required to wait for protracted periods before a visit.

766 8. Facility visiting areas and visitor waiting areas should be comfortable and
 767 pleasant, with water and food items available, and with easy access to restrooms. Space should
 768 be provided for secure storage of visitors' coats, handbags, and personal items.

769 9. Facilities should not screen visitors' immigration status, or require visitors to
 770 provide a Social Security number. Visitor identification may include documents issued by
 771 foreign states, and identification without photographs if photographic identification is
 772 unavailable for religious or other acceptable reasons. Minors should not be required to produce
 773 identification. Visitors should not be excluded based solely on a prior conviction.

774 10. Visitors may be subject to personal search using nonintrusive screening
 775 techniques such as patdown, metal detector-aided searches, and visual inspection of handbags
 776 and other containers.

777 11. Verbal consent of residents should be sufficient to see visitors.

778 12. Visits to consenting residents from community volunteers should be
 779 accommodated.

780 13. Visitors should be permitted to leave money or property for residents, and should
 781 be provided with a receipt. Property may include religious items, reading material, pictures,
 782 legal documents, eyeglasses, dentures, personal address books, correspondence, wedding rings,
 783 and telephone calling cards.

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

786 **B. External Visits**

787 1. Residents should be permitted to visit family members detained at the same
 788 facility as well as family members detained at another facility.

789 2. Residents who are detained for more than 30 days should be permitted to request
 790 to be transferred to a facility that is more conducive to visits by family and friends.

791 3. Residents who are detained for more than 90 days, particularly those with US
 792 citizen family members and minor children, should be eligible to leave a facility for home visits.
 793 DHS/ICE may impose reasonable conditions, including electronic monitoring and/oran escort, to
 794 ensure a resident's continued custody and return.

795 4. Residents should be permitted to leave a facility for compelling humanitarian
 796 reasons such as a visit to critically ill family members, to attend funerals or wakes, or to attend
 797 family court proceedings, criminal proceedings, or probation meetings. DHS/ICE may impose
 798 reasonable conditions, including an escort, to ensure the resident's return. If in-person
 799 attendance is not possible, attendance through videoconferencing or telephone should be
 800 arranged.

801

802 **XI. ADMINISTRATION AND STAFFING**

803 *This section incorporates by reference the standards in Part X of the ABA Standards on*
 804 *the Treatment of Prisoners. The subsections below supplement the standards in Part X. In cases*

805 *where the contents of Part X conflict with the subsections below, the subsections below should be*
 806 *followed.*

807 **A. Professionalism**

808 1. In their interactions with residents, facility staff should model fair, respectful, and
 809 constructive behavior; engage in preventive problem solving; and rely upon effective
 810 communication.

811 a. Staff should address individual residents by the name(s) that they choose to be
 812 addressed.

813 b. Residents should be referred to as “residents” or by their chosen name, and should
 814 not be referred to as “prisoners,” “inmates,” or any other term connoting
 815 incarceration.

816 c. Staff should not wear prison-type uniforms or be referred to as “guards.”

817 d. If facility staff learns of a threat or actual harm to a resident or to staff, he or she
 818 should report that information promptly to a supervisor. Staff should also report
 819 any information relating to corrupt or criminal conduct by other staff directly to
 820 the facility administrator and to an independent government official with
 821 responsibility to investigate staff misconduct. Staff should provide investigators
 822 with full and candid information about observed misconduct.

823 2. DHS/ICE should collect, update, and make readily accessible to the appropriate
 824 officials and staff (through its standard information systems) all resident information that is
 825 necessary to comply with its civil detention standards and custody review and release
 826 procedures.

827 **B. Staffing and Recruitment**

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

830 1. Facility staffing should be sufficient to enable staff to engage in direct supervision
 831 in communal spaces during hours not designated for quiet and sleep.

832 2. Facility staffing should be sufficient to enable staff to be present in sufficient
 833 numbers to minimize the need for imposing restrictions on freedom of movement and to
 834 facilitate access to different sections of the facility.

835 **C. Training**

836 1. All facility staff should be adequately trained. Facility administrators should
 837 require all staff to participate in a comprehensive pre-service training program and a regular
 838 program of in-service training and specialized training when appropriate. Training programs
 839 should equip staff to:

840 a. Understand the constitutional and other legal rights of residents relevant to
 841 the staff’s professional duties;

842 b. Understand and ensure compliance with these standards;

- 843 c. Maintain order while treating residents with respect;
- 844 d. Possess multicultural awareness and understand cultural differences;
- 845 e. Communicate effectively with residents, including residents from different
846 cultures;
- 847 f. Use non-force techniques for avoiding and resolving conflicts;
- 848 g. Identify and respond to medical and mental health emergencies, recognize
849 and report the signs and symptoms of mental disability and suicide risk,
850 and secure appropriate medical and mental health services in response;
- 851 h. Detect and respond to signs of threatened and actual physical and sexual
852 assault and sexual pressure against residents;
- 853 i. Avoid inappropriate relationships, including any sexual contact, with
854 residents;
- 855 j. Facilitate resident use of the grievance process, and understand the
856 grievance process's benefits for staff and facilities;
- 857 k. Maintain appropriate records, including clear and accurate reports; and
- 858 l. Maintain their professional qualifications and credentials through regular
859 training and recertification.
- 860 2. Staff should have ready access to copies of these standards, and written policies
861 and procedures related to operation of the facility.
- 862 3. DHS/ICE and facility administrators should provide specialized training to staff
863 who work with specific types of residents to address the physical, social, and psychological
864 needs of such residents, including women, persons who face language or communication
865 barriers, persons with physical or mental disabilities, persons who are under the age of 18,
866 elderly persons, lesbian, gay, bisexual or transgender (LGBT) persons, torture survivors, asylum
867 seekers, and others.

868 **D. Privately Owned or Administered Civil Detention Facilities**

- 869 1. DHS/ICE should be able to move residents from privately owned or operated
870 facilities to alternative civil facilities if termination of the contract proves necessary. DHS/ICE
871 should develop a comprehensive plan, in advance of entering into any contract, to ensure that it
872 can meet this responsibility. Housing in county jails is not an acceptable alternative to civil
873 detention.
- 874 2. Decisions relating to the length and location of a resident's confinement,
875 discipline, transfer, and temporary or permanent release, should never be delegated to a private
876 entity.
- 877 3. DHS/ICE should implement procedures to monitor compliance with its detention
878 contracts and these standards systematically, regularly, and using a variety of on- and off-site
879 monitoring techniques, including reviewing files and records, physically inspecting facilities, and
880 interviewing staff and residents.

881 **XII. PERSONAL SECURITY AND MANAGEMENT OF RESIDENTS**882 **A. Personal Security**

883 1. DHS/ICE and facility administrators should implement procedures to identify
884 residents who are vulnerable to physical or sexual abuse, manipulation, or psychologically
885 harmful verbal or other abuse by residents or by staff, and to protect these and other residents
886 who request and need protection.

887
888 2. DHS/ICE and facility administrators should take all practicable actions to reduce
889 violence and the potential for violence in facilities and during transport. DHS/ICE should
890 promptly and thoroughly investigate and make a record of all incidents involving violence, and
891 should take appropriate remedial and disciplinary action.

892
893 3. DHS/ICE and facility administrators should exercise reasonable care with respect
894 to the property that residents lawfully possess or have a right to reclaim. DHS/ICE should
895 provide a remedy for residents whose property is lost by facility staff or is stolen.

896
897 **B. Prevention of and Response to Sexual Assault and Abuse**

898 *This subsection incorporates by reference the provisions of 28 C.F.R. § 115, which*
899 *implement the Prison Rape Elimination Act of 2003 (PREA, P.L. 108-79, codified at 42 U.S.C.*
900 *§§ 15601-15609), directing how facilities should prevent and report sexual abuse or harassment*
901 *perpetrated against residents. The subsections below supplement the above referenced law and*
902 *regulations. In cases where the contents of that law and regulations conflict with the subsections*
903 *below, the subsections below should be followed.*

904
905 1. DHS/ICE and facility staff should protect all residents from sexual assault by
906 other residents, as well as from pressure by other residents to engage in sexual acts.

907
908 2. DHS/ICE and facility staff should protect all residents from any sexual contact
909 with or sexual exploitation by staff, including volunteers and employees of any governmental or
910 private organizations who work in the facility.

911
912 3. DHS/ICE and facility administrators should establish and publicize the means by
913 which residents and staff may easily and confidentially report to DHS/ICE, facility
914 administrators, and appropriate outside entities that a resident has been sexually assaulted, is
915 being pressured to engage in sexual acts with another resident or staff, or there has been sexual
916 contact or exploitation involving a resident and staff.

917
918 4. Facility administrators should promptly relay any such report, or any other
919 information they obtain regarding such conduct, to DHS/ICE.

920
921 5. DHS/ICE should implement a policy of prompt and thorough investigation of any
922 credible allegation of the threat or commission of sexual assault, or any sexual contact between a
923 resident and staff. DHS/ICE and facility administrators should take all appropriate steps to
924 protect the resident from further sexual assaults, contacts, or exploitation.

925 6. Medical treatment and testing, and psychological counseling, should be made
 926 immediately available to victims of sexual assault or sexual exploitation by staff or other
 927 residents. DHS/ICE and facility staff, including health care staff, should be trained to identify
 928 and document signs of sexual assault and should implement a protocol for providing victims with
 929 a thorough forensic medical examination performed by an appropriately trained and qualified
 930 medical professional.

931
 932 7. DHS/ICE and facility staff, including health care staff, should not disclose
 933 information about any incident of resident sexual abuse, except to other staff or law enforcement
 934 personnel who need to know about the incident in order to make treatment, investigation, or
 935 other security or management decisions, or to appropriate external oversight officials or
 936 agencies.

937
 938 **C. Prevention of Harm**

939 1. DHS/ICE and facility administrators should take all practicable actions to reduce
 940 violence and the potential for violence in civil detention facilities and during transport. DHS/ICE
 941 and facility administrators should promptly and thoroughly investigate and make a record of all
 942 incidents involving violence, and should take appropriate remedial action.

943 2. DHS/ICE and facility administrators should implement procedures for identifying
 944 residents who are vulnerable to physical or sexual abuse, manipulation, or psychologically
 945 harmful verbal or other abuse by residents or by staff, and for protecting these and other
 946 residents who request and need protection.

947 3. DHS/ICE and facility administrators should implement procedures to identify
 948 residents at risk of suicide and to intervene to prevent suicides. When an initial mental health
 949 screening or any subsequent observation identifies a risk of suicide, the resident should be placed
 950 in a safe setting and be promptly evaluated by a qualified mental health professional, who should
 951 determine the degree of risk, required level of supervision, and appropriate course of mental
 952 health treatment.

953 **D. Searches**

954 1. Searches of a resident's body, living quarters, and possessions should follow
 955 written protocols that implement this Standard.

956 2. Pat-down searches and other clothed body searches should be conducted only
 957 after contact visits or upon individualized, reasonable suspicion of wrongdoing or a threat. Pat-
 958 down searches should be conducted by staff of the same gender as the resident; should be brief;
 959 and should avoid unnecessary force, embarrassment, and indignity to the resident.

960 3. Visual searches of a resident's private bodily areas should be conducted only
 961 upon entry into the facility or upon probable cause to believe the resident is carrying contraband.
 962 Such searches should be conducted by trained personnel of the same gender in a private place out
 963 of the sight of other residents and of staff not involved in the search, except that a resident should
 964 be permitted to request that more than one staff member be present.

965 4. Facility staff should conduct all searches of resident living quarters and
 966 possessions so as to minimize damage to or disorganization of resident property and unnecessary

967 invasions of privacy. A resident should be permitted to observe a search of his or her living
 968 quarters or possessions. The invasiveness of a search into a resident’s sleeping area, possessions,
 969 or clothing should be proportionate to the grounds for the search.

970 5. Legal materials should be searched only for contraband, and should not be read,
 971 reviewed, altered, or destroyed during the course of a search.

972 6. DHS/ICE and facility administrators should keep records of all facility searches.
 973 The records should identify the circumstances of the search, the persons conducting the search,
 974 staff and residents who were witnesses, and contraband or other confiscated materials. The
 975 resident should be given written confirmation of the property confiscated.

976 **E. Discipline**

977 1. All decisions to administer discipline should be approved by DHS/ICE.

978 2. Disciplinary procedures should provide residents with a meaningful opportunity
 979 to contest alleged violations and to appeal disciplinary determinations.

980 3. Disciplinary measures should be incremental and proportionate to violations.

981 4. In no case should disciplinary measures, including disciplinary separation, deny
 982 or limit:

983 a. Access to sufficient light to permit reading in the resident’s housing area,
 984 and access to reasonable darkness during sleeping hours;

985 b. Adequate ventilation, heat or air conditioning as necessary;

986 c. Opportunity to sleep;

987 d. Access to medication, medical devices, or other forms of healthcare;

988 e. Nutrition, including access to water;

989 f. Visits or communication with counsel, clergy, or family members; or

990 g. Access to outdoor recreation.

991 **F. Use of Force**

992 1. Facility administrators should authorize the use of force against a resident only:

993 a. To protect and ensure the safety of staff, residents, and others; to prevent
 994 serious property damage; or to prevent escape;

995 b. If facility administrators reasonably believe the benefits of force outweigh
 996 the risks to other residents and staff; and

997 c. As a last alternative after other reasonable efforts to resolve the situation
 998 have failed.

999 2. In no case should staff use force against a resident:

1000 a. To enforce an institutional rule or an order unless the disciplinary process
 1001 is inadequate to address an immediate security need;

- 1002 b. To gratuitously inflict pain or suffering, punish past or present conduct,
1003 deter future conduct, intimidate, or gain information; or
- 1004 c. After the risk that justified the use of force has passed.
- 1005 3. Restraints should only be used in emergencies: if a resident’s behavior poses an
1006 immediate risk to the safety of others or to the resident, or poses an immediate risk of serious
1007 property damage; and if less restrictive means have been determined to be ineffective. When
1008 restraints are necessary, authorities should use the least restrictive forms of restraints that are
1009 appropriate and should use them only as long as the need exists, not for a predetermined period
1010 of time. Restraints should not be applied to residents when medically contraindicated, including
1011 during labor and postpartum.

1012 **G. Serious Illness and Death in Custody**

1013 *This section incorporates by reference ICE PBNDS 2011 Standard 4.7 Terminal Illness,*
1014 *Advance Directives and Death Standard, including the ICE Directive on “Notification and*
1015 *Reporting of Detainee Deaths,” Directive 7.9-0, October 1, 2009. The subsections below*
1016 *supplement that Standard. In cases where the contents of that Standard conflict with the*
1017 *subsections below, the subsections below should be followed.*

- 1018
- 1019 1. DHS/ICE and facility staff should establish and comply with clear procedures
1020 involving the proper manner to notify residents and their families in cases of serious illness or
1021 death of either residents or their family members.
- 1022 2. When a resident dies, DHS/ICE should promptly notify family members, consular
1023 officials, and the appropriate medical examiner of the death and its circumstances.
- 1024 3. An autopsy should be performed whenever a resident dies in ICE custody.
- 1025 4. All deaths of residents, including their circumstances, should be immediately
1026 reported to DHS/ICE headquarters and to other federal agencies that collect data on deaths in
1027 custody.
- 1028 5. In the event of serious illness or death, religious preferences expressed by
1029 residents should be followed to the extent possible.

1030

1031 **XIII. ADMINISTRATIVE AND DISCIPLINARY SEPARATION**

1032 *This section incorporates by reference all protections afforded by the ABA Standards on*
1033 *the Treatment of Prisoners Standard 23-2.7 (“Rationales for long-term segregated housing”),*
1034 *and Standard 23-2.9 (“Procedures for placement and retention in long-term segregated*
1035 *housing”). The subsections below supplement those Standards. In cases where the provisions of*
1036 *those Standards conflict with the subsections below, the subsections below should be followed.*

1037

1038 **A. Separation Generally**

- 1039 1. DHS/ICE should ensure that facilities have the capacity to separate residents from
1040 the general population for administrative and disciplinary reasons.

102

1041 2. The due process protections available to residents should be proportionate to their
1042 anticipated time in separation.

1043

1044 **B. Administrative Separation**

1045 1. Administrative separation status is a nonpunitive status in which restricted
1046 conditions of confinement are required only to ensure the safety of residents or others, the
1047 protection of property, or the security or good order of the facility.

1048 2. Residents in administrative separation should not be commingled with residents in
1049 disciplinary separation.

1050 3. DHS/ICE should develop and follow written procedures, consistent with this
1051 standard, governing the separation of residents. Facilities should provide detailed reasons for
1052 placement of an individual in administrative separation. Residents and their attorneys should be
1053 provided prompt written notice of administrative separation decisions.

1054 4. Prior to the resident's placement in administrative separation, a facility supervisor
1055 should review the case in order to determine whether administrative separation is warranted.

1056 5. Reasons for Placement in Administrative Separation

1057 a. A resident should be placed in administrative separation when the
1058 resident's continued presence in the general population poses a threat to
1059 life, property, self, staff, or other residents; for medical reasons; or under
1060 other circumstances set forth below. Examples of incidents warranting a
1061 resident's assignment to administrative separation may include, but are not
1062 limited to, the following:

1063

1064 i. A resident is awaiting an investigation or a hearing for a violation of
1065 facility rules, but only as necessary to protect the security and
1066 orderly operation of the facility.

1067 ii. A resident is a threat to the security of the facility.

1068 iii. A resident requires protection. Separation may be initiated at the
1069 resident's request or by staff in order to protect the resident from
1070 harm. DHS/ICE should develop procedures for separation of
1071 residents in these circumstances, as well as to reintegrate them into
1072 the general population post-separation.

1073

1074 6. Review of Resident Status in Administrative Separation

1075 a. DHS/ICE should develop written procedures for the regular review of all
1076 residents held in administrative separation, consistent with the procedures
1077 specified below.

1078

1079 b. A facility supervisor should conduct a review within 24 hours of the
1080 resident's placement in administrative separation to determine whether

- 1081 separation is still warranted. The review should include an interview with
 1082 the resident.
- 1083
- 1084 c. A written record should be made of the decision and its rationale.
- 1085
- 1086 d. A supervisor should conduct an identical review after the resident has
 1087 spent seven days in administrative separation, and every week thereafter,
 1088 at a minimum.
- 1089
- 1090 e. The review should include an interview with the resident, and a written
 1091 record should be made of the decision and its rationale.
- 1092
- 1093 f. A copy of the decision and rationale for each review should be provided to
 1094 the resident unless, in exceptional circumstances, this provision would
 1095 jeopardize the facility's safety, security, or orderly operations. The
 1096 resident should also be afforded an opportunity to appeal a review
 1097 decision to DHS/ICE. The appeal should take into account the resident's
 1098 views and should result in a written record of the decision and its
 1099 rationale.
- 1100
- 1101 g. A daily report should be kept and reviewed monthly by DHS/ICE that
 1102 explains decisions to keep a resident in administrative separation.
- 1103
- 1104 h. When a resident has been held in administrative separation for more than
 1105 30 days cumulatively, the facility should notify DHS/ICE in writing.
- 1106
- 1107

C. Disciplinary Separation

- 1108 1. A resident may be placed in disciplinary separation only by order of the facility
 1109 administrator, after a hearing in which the resident has been found to have committed a crime or
 1110 a serious violation of a facility rule, and when alternative dispositions would inadequately
 1111 regulate the resident's behavior.
- 1112 2. Duration
- 1113 a. The maximum stay in disciplinary separation is 30 days, except in
 1114 extraordinary circumstances. If facility staff wishes to separate a resident
 1115 for more than 30 days, staff should send a written justification to a
 1116 DHS/ICE supervisor.
- 1117
- 1118 3. Review of Resident Status in Disciplinary Separation
- 1119
- 1120 a. DHS/ICE should implement written procedures for the regular review of
 1121 all disciplinary separation cases, consistent with subsection b:
- 1122
- 1123 b. A security supervisor, or the equivalent, should interview the resident and
 1124 review his or her status in disciplinary separation every seven days to

1125 determine whether the resident is provided showers, meals, visitation,
 1126 recreation, law library access, and appropriate treatment in accordance
 1127 with these standards.

- 1128
- 1129 4. The supervisors should document his or her findings after every review.
 1130
- 1131 5. The supervisor should recommend the termination of disciplinary separation upon
 1132 finding that it is no longer necessary to regulate a resident's behavior.
 1133
- 1134 6. The supervisor may shorten, but not extend, the original term of separation.
 1135
- 1136 7. All review documents should be placed in the resident's detention file.
 1137
- 1138 8. After each formal review, the resident and his or her attorney should be given a
 1139 written copy of the reviewing officer's decision and the basis for his or her finding, unless this
 1140 step would compromise institutional security. If a written copy cannot be delivered, the resident
 1141 should be advised of the decision orally, and the detention file should so note, identifying the
 1142 reasons why the notice was not provided in writing.
 1143

1144 **D. Requirements for Administrative and Disciplinary Separation**

- 1145 1. Requirements generally
 1146
- 1147 a. Conditions of separation should be based on the amount of supervision
 1148 required to control a resident and to safeguard the resident, other residents
 1149 and facility staff.
 1150
- 1151 b. Residents should be evaluated by a medical professional, including for
 1152 mental health, prior to placement in separation.
 1153
- 1154 c. Separated residents should be permitted as much time out of their rooms
 1155 as possible, consistent with good security practices.
 1156
- 1157 d. In every instance, any exceptions to these requirements should be:
 1158
- 1159 i. Made only for the purpose of ensuring resident and staff safety (i.e.,
 1160 not for purposes of punishment);
- 1161 ii. Approved by a DHS/ICE supervisor;
- 1162 iii. On a temporary and situational basis, continued only for as long as is
 1163 justified by threat to the safety or security of the facility, its staff, or
 1164 resident population; and
- 1165 iv. Documented in both the facility's records and the individual
 1166 resident's detention file.

1167

- 1168 2. Special Needs
 1169
 1170 a. Separated residents should be provided appropriate accommodations and
 1171 professional assistance for special conditions as needed (e.g., translation
 1172 and interpretation services; and medical, therapeutic, or mental health
 1173 treatment), on an equal basis as residents in the general population.
 1174
 1175 3. Rooms
 1176 a. Rooms used for purposes of separation must be appropriately sized, well
 1177 ventilated, adequately lit, heated/cooled as necessary, and maintained in a
 1178 sanitary condition at all times in accordance with the standards for general
 1179 population.
 1180
 1181 b. Residents should be able to exercise control over lighting in their rooms
 1182 and should have access to natural light, if the physical plant allows it.
 1183
 1184 4. Privileges
 1185 a. Administrative Separation
 1186 i. Residents in administrative separation should receive the same
 1187 privileges available to residents in the general population, consistent
 1188 with safety and security considerations for residents and facility
 1189 staff. They should be provided opportunities to spend time outside
 1190 their rooms (in addition to the required recreation periods), in order
 1191 to socialize, watch television and pursue other activities.
 1192
 1193 b. Disciplinary Separation
 1194 i. Residents in disciplinary separation may be subject to more stringent
 1195 controls, particularly as relates to personal property.
 1196

1197 **E. Supervisory and Staff Visits**

1198
 1199 In addition to the direct supervision performed by facility staff:
 1200

- 1201 1. Shift supervisors should review each unit in which separated residents are held
 1202 and see each resident on a daily basis, including on weekends and holidays.
 1203 2. Program staff may visit a separated resident upon the resident's request.

1204 **F. Health Care**

1205 *This subsection incorporates by reference the provisions of the ABA Standards on the*
 1206 *Treatment of Prisoners Standard 23-2.8 ("Segregated housing and mental health") that pertain*
 1207 *to the monitoring of the mental health of residents in segregated housing.*
 1208

- 1209 1. Health care personnel should conduct face-to-face medical assessments at least
 1210 once each day for separated residents. When an assessment creates cause for concern, it should

102

1211 be followed up with a complete evaluation by a qualified medical or mental health professional,
1212 and indicated treatment.

1213
1214 2. Residents with serious mental illness should be placed in a setting within or
1215 outside of the facility in which appropriate treatment can be provided.

1216
1217 3. Separation should not be viewed or used as treatment for mental health issues.

1218
1219 4. Residents with serious mental illness should not be placed in prolonged solitary
1220 confinement.

1221
1222 5. Residents with serious mental illness who are separated should be evaluated
1223 outside of their cells by a mental health provider at least once every seven days for routine care
1224 as well as to determine whether or not continued separation is or will be detrimental to their
1225 mental health.

1226
1227 6. Medical visits should be recorded, and any action taken should be documented in
1228 a separate logbook and in the individual resident's detention file.

1229

1230 **G. Communications**

1231 1. Separated residents should be permitted to write, send and receive letters and
1232 other correspondence, in a manner similar to those housed in the facility's general population.

1233
1234 2. Separated residents should have access to telephones in a manner that is
1235 consistent with safety and security requirements. They should be permitted to place calls to
1236 attorneys, other legal representatives, courts, embassies, consulates, and government offices,
1237 including the DHS OIG, DHS CRCL, ICE Joint Intake Center, and ICE's Public Advocate.
1238 Telephone access may be denied only as necessary to protect the security of the resident, other
1239 residents, or the security or orderly operation of the facility. Denials of telephone use should be
1240 documented.

1241

1242 **H. Access to Legal Services**

1243 1. Separated residents should have access to legal services in accordance with
1244 Standard VII. Access to Legal Services, subject only to restrictions necessary to ensure the safety
1245 and security of the resident, visitor, or facility staff. A resident's attorney of record should be
1246 notified of any separation within 24 hours.

1247

1248 2. Residents segregated for their own protection should be provided access to legal
1249 research tools and materials. Such residents may be required to use the law library at separate
1250 times from the general population. If such residents do not have equal or equivalent access to the
1251 law library, legal materials should be brought to them upon request.

1252

1253 3. Denial of access to the law library should be supported by compelling security
 1254 concerns; for the shortest period required for security; and fully documented in the facility
 1255 logbook.

1256
 1257 4. The facility administrator should notify DHS/ICE every time access is denied, and
 1258 documentation, including the rationale for denial, should be placed in the detention file.

1259
 1260 5. DHS/ICE and facility staff should notify separated residents in advance of legal
 1261 orientation presentations and provide these residents an opportunity to attend, except when a
 1262 particular resident's attendance poses a security risk. If a separated resident cannot attend for this
 1263 reason, designated facility staff should make alternative arrangements to offer a separate
 1264 presentation and individual consultation to the resident.

1265

1266 **I. Visitation**

1267 1. Separated residents should retain visiting privileges.

1268 2. Separated residents should ordinarily be able to use the visiting room during
 1269 normal visiting hours. The facility may restrict or disallow visits for separated residents only as
 1270 necessary to protect the security of the resident or to ensure the security or orderly operation of
 1271 the facility.

1272
 1273 3. When visits are restricted or disallowed, a report should be filed with the facility
 1274 administrator and DHS/ICE, and made part of the resident's file.

1275
 1276 4. Separated residents in need of protection, as well as violent and disruptive
 1277 residents, may be prohibited from using the visitation room during normal visitation hours as
 1278 necessary to protect the resident(s) or the security or orderly operation of the facility. Visits may
 1279 be disallowed only as necessary to protect the security of the resident(s) or the security or orderly
 1280 operation of the facility.

1281

1282 **J. Access to Religious Services**

1283 Separated residents should be permitted to participate in religious practices in accordance
 1284 with Standard IX. Access to Religious Services, subject to restrictions necessary to protect the
 1285 safety and security of the resident, visitor, or facility staff, or to ensure the orderly operation of
 1286 the facility.

1287

1288 **K. Reading Materials (Non-Legal)**

1289 Separated residents should have access to reading materials, including religious materials.

1290

1291

1292

102

1293 L. Recreation

1294
1295 1. Separated residents should be offered at least two hours of recreation and exercise
1296 per day, outside their rooms and with other residents, scheduled at a reasonable time, at least
1297 seven days per week. Such residents should also have access to radio and television.
1298

1299 2. Separated residents should be provided with weather-appropriate equipment and
1300 attire where cover is not provided to mitigate inclement weather.
1301

1302 3. Recreation should be denied or suspended only if the resident's recreational
1303 activity may unreasonably endanger safety or security.
1304

1305 4. When a separated resident is deprived of recreation (or any usual authorized items
1306 or activity), a written report of the action should be forwarded to the facility administrator.
1307 Denial of recreation must be evaluated daily by a shift supervisor.
1308

1309 5. A resident in disciplinary separation may temporarily lose recreation privileges
1310 upon a written determination that he or she poses an unreasonable risk to the facility, to himself
1311 or herself, or to others.
1312

1313 6. When recreation privileges are suspended, the disciplinary panel or facility
1314 administrator should provide the resident with written notification, including the reason(s) for the
1315 suspension, any conditions that must be met before restoration of privileges, and the duration of
1316 the suspension provided the requisite conditions are met for its restoration.
1317

1318 7. The denial of recreation privileges should be included as part of the regular
1319 reviews required for all separated residents. The reviewer(s) should state, in writing, whether the
1320 resident continues to pose a threat to self, others, or facility security and, if so, how.
1321

1322 8. Recreation privileges should be denied for more than seven days only in extreme
1323 circumstances and with the written concurrence of the facility administrator and a health care
1324 professional.
1325

1326 9. The facility should notify DHS/ICE in writing when a resident is denied
1327 recreation privileges for more than seven days.
1328

1329 XIV. GRIEVANCES

1330 A. Establishing and Notification of Procedures

1331 1. The facility should provide meaningful and timely procedures for residents to
1332 submit grievances against staff and other residents, as well as in response to facility conditions,
1333 failure to comply with these standards, or the non-provision or deficient provision of medical
1334 care.

1335 2. Facility staff and residents should be fully informed of grievance procedures.

1336 3. Residents should be able to bring grievances in a confidential manner, through a
1337 formal process, to facility administrators and to DHS/ICE officials.

1338 4. DHS/ICE should be the final arbiter of grievances.

1339 **B. No Retaliation**

1340 Retaliation for filing grievances should be strictly prohibited.

1341 **C. Records and Reporting**

1342 1. Records of grievance submissions and their resolution should be maintained at the
1343 facility and by DHS/ICE.

1344 2. Records of grievance submissions and their resolution should be available for
1345 review by DHS/ICE, inspectors and facility administrators.

1346 3. Grievances in each facility should be aggregated in a monthly report to DHS/ICE
1347 headquarters that includes information about the types of complaints, their resolution, and the
1348 time for completion. These monthly reports should be available through open records requests.

1349 4. DHS/ICE and facility administrators should routinely review grievances for
1350 patterns in complaints, including complaints about particular staff members, particular parts of
1351 the facility, or failure to comply with these standards.

1352

1353 **XV. ACCOUNTABILITY AND OVERSIGHT**

1354 *This Part incorporates by reference ABA Standards on the Treatment of Prisoners*
1355 *Standards 23-11.4 (“Legislative oversight and accountability”) and 23-11.5 (“Media access to*
1356 *correctional facilities and prisoners”), which pertain to legislative oversight and media access.*
1357

1357

1358 **A. Internal accountability**

1359 1. DHS oversight units, including CRCL, should review all facility inspection
1360 reports, and should prepare reports that summarize the facility inspection reports, highlight
1361 findings and recommend improvements at least twice annually. These biannual reports should
1362 be promptly released to the public.

1363 2. If DHS/ICE contracts for provision of any services or programs, it should ensure
1364 that the contract requires the provider to comply with all civil detention standards and to meet the
1365 related performance outcomes. DHS/ICE should implement a system to monitor compliance with
1366 its contracts, to hold the contracted providers accountable for any deficiencies, and to terminate
1367 its use of facilities that do not perform critical activities or meet required outcomes.

1368 3. Accreditation agencies should develop standards for civil detention facilities and
1369 DHS/ICE should ensure that facilities meet these standards.

1370 4. DHS/ICE and facility administrators should regularly review use of force reports,
1371 serious incident reports, separation reports, and grievances, and take any necessary remedial
1372 action to address facility or system-wide problems.

1373 5. DHS/ICE should routinely collect, analyze, and publish statistical information on
 1374 detention operations, including attorney visits, family visits, security incidents, sexual assaults,
 1375 resident grievances, uses of force, health and safety, spending on programs and services,
 1376 program participation and outcomes, staffing, and employee discipline.

1377 6. DHS/ICE should develop uniform national definitions and methods of defining,
 1378 collecting, and reporting accurate and complete data.

1379 7. Congress or state or local government authorities should not exempt DHS/ICE or
 1380 detention contractors from the Administrative Procedure Act, Freedom of Information Act, or
 1381 Public Records Act.

1382 **B. External regulation and investigation**

1383 1. Independent governmental bodies responsible for such matters as fire safety,
 1384 sanitation, environmental quality, food safety, education, and health should regulate, inspect, and
 1385 enforce regulations in facilities.

1386 2. Facilities should be subject to the same enforcement penalties and procedures,
 1387 including abatement procedures for noncompliance, as are applicable to other institutions.

1388 3. Independent observers, including NGOs, should be permitted to monitor
 1389 compliance with these standards and to issue public reports. DHS/ICE and detention
 1390 administrators(including contract or jail employees) should allow observers complete access to
 1391 the facility and should cooperate as fully as possible with observer requests, including by
 1392 international organizations.

1393 4. DHS/ICE and facility administrators should encourage and accommodate visits
 1394 by judges and lawmakers and by members of faith-based groups, the business community,
 1395 institutions of higher learning, and other groups interested in immigration detention issues.

1396 **C. Access to Facility by Non-Governmental Organizations**

1397 1. NGOs, other stakeholders, and the press should be authorized upon request to tour
 1398 facilities and to conduct interviews with staff and consenting residents, and to issue public
 1399 reports.

1400 2. Denial of tour requests or of access to any part of a facility or to particular staff or
 1401 residents should be explained in writing.

1402 3. DHS/ICE may require that access requests include names of tour participants and
 1403 be submitted as many as 10 business days in advance of the requested tour date.

1404 4. Tour participants should be able to pre-identify consenting residents with whom
 1405 they wish to meet, and ask that consenting residents sign up for meetings on site. Consistent with
 1406 ICE's Stakeholder Procedures for Requesting a Detention Facility Tour and/or Visitation,
 1407 participants should not be required to pre-identify residents in order to meet with them during a
 1408 tour.

1409 5. Residents should be informed that speaking with tour participants is voluntary,
 1410 and that tour participants are not government representatives and that residents should not solicit
 1411 legal representation from them.

1412 6. Tours should ordinarily include housing units, medical facilities, libraries,
1413 recreation areas, dining facilities, kitchens, visitation areas, separation units, and other areas of
1414 interest to the tour participants.

1415 7. Residents should be permitted to meet with tour participants in a setting where
1416 their conversation cannot be overheard or recorded by staff or other residents. Communication
1417 should not be through a glass or other barrier.

1418 **D. Access to Facility by Foreign Government Officials and Supranational**
1419 **Organizations**

1420 1. DHS/ICE should inform residents of their right to have embassy and consular
1421 officials notified that they are in custody.

1422 2. Upon request by the detainee, embassy and consular officials should be allowed to
1423 visit privately with any resident who is a citizen of their country.

1424 3. Embassy and consular officials should be given the opportunity to visit with
1425 residents on short notice and outside of usual visiting hours, and to exchange confidential
1426 documents with the residents.

1427 4. Representatives of international and intergovernmental organizations should be
1428 allowed to visit civil detention facilities and speak confidentially with residents and staff.

1429 5. Consular officials should be able to visit, converse and communicate with, and
1430 otherwise have full access to their nationals who are in DHS/ICE custody, unless the resident
1431 declines the visit, consistent with the Vienna Convention on Consular Relations.

1432

1433 **XVI. Glossary of Terms**

1434 **Administrative Separation** – see **Separation**.

1435

1436 **Assessment** is the process conducted at intake in which an individual’s legal, medical, family
1437 and other circumstances are considered and measured against categories employed by DHS/ICE
1438 to determine the resident’s classification.

1439

1440 **Classification** is the decision made based on the assessment process as to whether a person
1441 subject to DHS custody should be detained, where (geographic), at what manner of facility, and
1442 subject to what special conditions.

1443

1444 **Detainee (Immigration Detainee)** is a person held in DHS custody due to a potential or
1445 confirmed violation of civil immigration laws. Since “detainee” may connote criminal and short-
1446 term custody, these standards typically use the term “resident” to refer to persons in DHS/ICE
1447 and DHS/CBP custody. See “Resident” below.

1448

102

1449 **Direct Supervision** is an approach to detention management that seeks to maintain a staff
1450 presence in communal areas at all times. This approach is intended to allow for significant
1451 freedom of movement for residents, while also making staffing more costeffective.⁵

1452
1453 **Disciplinary Separation** – see **Separation**.

1454
1455 **Executive Office for Immigration Review or EOIR** is the US Department of Justice (DOJ)
1456 agency that administers the immigration court system and the appellate Board of Immigration
1457 Appeals (BIA).

1458
1459 **Facility (Detention Facility)** is any building or structure that houses immigration detainees.
1460 Detention facilities currently include federal Bureau of Prisons (BOP) facilities; state and local
1461 jails, where immigration detainees are sometimes housed with individuals serving sentences for
1462 criminal convictions, and which are sometimes operated by private contractors under agreements
1463 with state or local governments; Service Processing Centers, which are owned and operated by
1464 DHS/ICE; and Contract Detention Facilities, which are owned and operated by private
1465 contractors under agreements with DHS/ICE.

1466
1467 **Family member** includes biological and adopted family members, as well as spouses (including
1468 common law spouses), domestic partners, stepparents and stepsiblings, foster family, and in-
1469 laws.

1470
1471 **Force** means offensive or defensive physical contact with a resident, including blows, pushes, or
1472 defensive holds, whether or not involving batons or other instruments or weapons; discharge of
1473 chemical agents; discharge of electronic weaponry; and application of restraints such as
1474 handcuffs, chains, irons, straitjackets, or restraint chairs.

1475
1476 **Immigration and Customs Enforcement or ICE** is the US Department of Homeland Security
1477 (DHS) agency with custody over most immigration detainees. DHS's Customs and Border
1478 Protection (CBP) agency has short-term custody over persons who (typically) are arrested at or
1479 near US land borders.

1480
1481 **Indigent** means without funds, or with only nominal funds.

1482
1483 **Intake** is the process through which a detainee is registered either with DHS/ICE or with a
1484 particular facility where the individual will be housed. Intake involves recording various points
1485 of information about the individual, including medical status, legal status, and other information
1486 important to the administration of the individual's detention.

1487
1488 **Joint Intake Center (JIC)** is the entity within DHS responsible for recording and tracking
1489 salient information about all individuals in ICE's custody. JIC creates and maintains current
1490 files for all detainees, and also receives complaints about the implementation of ICE policies.

1491

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

1492 **Legal personnel** refers to a legal representative or an individual (other than an interpreter)
 1493 working under the direction and supervision of an attorney, who assists with group legal
 1494 presentations and in representing individual residents. Legal personnel may interview residents,
 1495 assist them in completing forms, and deliver case-related papers to them without the supervisory
 1496 attorney being present.

1497
 1498 **Legal representative** means an attorney or person who is otherwise legally permitted to
 1499 represent another in a matter of law, including law students; law graduates not yet admitted to
 1500 the bar; “reputable individuals”; accredited representatives; and accredited officials and attorneys
 1501 outside the United States (See 8 CFR § 292.1).

1502
 1503 **Medical evaluation** means a comprehensive assessment of a detainee’s medical and mental
 1504 status, intended to capture information about current illness, ongoing treatment regimens, and
 1505 risk factors for various forms of illness while in custody.

1506
 1507 **Normalized environment** means a combination of floor plans, fixtures, amenities, procedures
 1508 and programs that allow for living circumstances that approximate normal life outside the
 1509 facility. Such an environment should more closely resemble a secure college dormitory than a
 1510 jail.

1511
 1512 **Performance-Based National Detention Standards (PBNDS)** are the standards developed and
 1513 promulgated by ICE to govern the treatment of persons subject to ICE custody pending
 1514 immigration proceedings and removal. The PBNDS set forth the outcomes and performance
 1515 measures that must be met in order to satisfy particular standards. They are based on American
 1516 Correctional Association standards for pre-trial criminal detention.

1517
 1518 **Resident** refers to an individual who is detained in the civil immigration detention system. It is
 1519 the term that ICE and facility staff should use to refer to persons in their custody.

1520
 1521 **Separation** means to hold a resident apart from the general population, when the resident’s
 1522 continued presence would pose a threat to other residents, staff, or the security of the facility.
 1523 Separation may also be appropriate for residents who pose a threat to themselves; require
 1524 protection; are en route to another facility; are awaiting a hearing before a disciplinary panel;
 1525 have received a separation order from a disciplinary panel; or should be separated for medical
 1526 reasons. The standards use the term “separation,” rather than “segregation” because the latter
 1527 connotes criminal custody. **Administrative separation** of a resident is undertaken in the interest
 1528 of the safety, security, and wellbeing of that resident, and not for disciplinary reasons.

1529 **Disciplinary separation** is undertaken in response to actions by a resident that call for response
 1530 by facility staff in order to maintain the safety and security of residents and staff.

1531
 1532 **Serious Mental Illness** means a substantial disorder of thought or mood that significantly
 1533 impairs judgment, behavior, capacity to recognize reality or cope with the ordinary demands of
 1534 life within the detention facility environment and is manifested by substantial pain or disability.
 1535 It includes the status of being actively suicidal; severe cognitive disorders that result in
 1536 significant functional impairment; and severe personality disorders that result in significant
 1537 functional impairment and are marked by frequent episodes of psychosis, depression, or self-

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1538 injurious behavior. (See ABA Standards on the Treatment of Prisoners Standard 23-1.0,
1539 “Definitions.”)

1540
1541 **Special or legal correspondence** refers to a resident’s written communications to or from the
1542 following non-exhaustive list of individuals and entities: legal personnel; government attorneys;
1543 judges; courts; embassies and consulates; White House officials; DHS (including its Office for
1544 Civil Rights and Civil Liberties, its Office of the Inspector General, its Joint Intake Center, and
1545 ICE’s Public Advocate); the DOJ (including EOIR and the DOJ Office of the Inspector General);
1546 U.S. Public Health Service (including the Division of Immigration Health Services);
1547 administrators of grievance systems; representatives of the news media; representatives of
1548 oversight bodies, Congress or other legislative bodies; internal affairs representatives;
1549 government Ombudsmen; law enforcement personnel; the United Nations High Commissioner
1550 for Refugees (UNHCR); other relevant international agencies; and human rights agencies and
1551 others that can assist in documenting legal claims.

1552
1553 **Staff (Facility Staff)** means all full- and part-time staff whose employment entails work at a
1554 detention facility, whether as a DHS employee, an employee of a private corporation, or an
1555 employee of a state or local correctional facility.

1556
1557 **Vulnerable populations (individuals)** include children and minors under age 18; elderly
1558 persons; survivors of torture or violence; persons with mental or physical disabilities; pregnant
1559 women; persons with serious medical conditions and mental illness; transgender persons; and
1560 persons likely to be subject to physical or sexual abuse, manipulation, or severe verbal abuse in a
1561 facility.

REPORT

The resolution supports the adoption of standards to govern the treatment of persons in the US immigration detention system. These standards arise from the American Bar Association's (ABA's) longstanding leadership in ensuring access to justice for immigrant detainees, and in promoting fair and humane treatment for persons in custody.

The US Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) agency primarily detains persons who are in removal (deportation) proceedings.⁶ Persons in DHS/ICE custody are not facing criminal trials or serving prison sentences. Under the law, removal proceedings are civil in nature and the detention of immigrants serves to ensure their appearance at court and to effectuate their removal, not to punish them. A substantial percentage of ICE detainees do not have criminal records, and only a small percentage either have criminal records based on violent conduct or pose a national security threat. Under the law, DHS/ICE *must* detain broad categories of noncitizens and *can* detain all others in removal proceedings. The average number of persons detained by DHS/ICE each day exceeded 33,000 in 2011.⁷ It detained a total of 363,000 persons in FY 2010.⁸

Despite DHS/ICE's civil legal authority, the US immigration detention system has traditionally held detainees in jails and in jail-like facilities that are administered according to American Correctional Association (ACA)-based standards for persons awaiting criminal trials. The ABA Commission on Immigration has developed the civil immigration detention standards in order to promote access to justice and fair and humane treatment of persons in the immigration detention system.

The ABA's Background, Expertise and Interest in Immigration Detention Standards

ABA policy opposes detention of noncitizens except in extraordinary circumstances.⁹ The ABA favors humane alternatives that accomplish the same goals as detention; i.e., to ensure that noncitizens appear for their removal proceedings and (if so ordered) their actual removal from the country. To the extent that noncitizens must be detained by DHS/ICE, the ABA supports housing them in the least restrictive setting possible, separate and apart from criminal inmates, in facilities that reflect the civil nature of immigration detention.

⁶ Some immigration detainees have not yet been placed in removal proceedings, while others have been ordered removed and are awaiting physical removal from the United States.

⁷ ICE, *Fact Sheet: Detention Management*, Nov. 10, 2011, available at <http://www.ice.gov/news/library/factsheets/detention-mgmt.htm>.

⁸ US Department of Homeland Security, Office of Statistics, *Immigration Enforcement Actions: 2010*, June 2011, available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf>.

⁹ Such extraordinary circumstances may include a specific determination that the individual presents a threat to national security, presents a threat to public safety, presents a threat to another person or persons, or presents a substantial flight risk.

The ABA has worked for many years to ensure that foreign nationals in the US detention system are treated humanely. Although updated several times in the intervening years, DHS/ICE's detention standards originated through a process of collaboration between the ABA, the US Department of Justice (DOJ), and DOJ's former Immigration and Naturalization Service (INS). The ABA worked closely with DOJ over the course of several years to craft the first meaningful set of standards to govern treatment of persons in immigration detention, focusing on four legal access standards: visitation, telephone access, group presentations on legal rights, and access to legal materials. DOJ/INS initially approved and issued the standards on January 29, 1998, and revised and reissued them as the National Detention Standards (NDS) on September 20, 2000. However, neither the NDS, nor subsequent revisions known as the Performance Based National Detention Standards (PBNDS) of 2008 and 2011, have been codified in a statute or regulation.

Following their adoption in 2000, the ABA prioritized implementation of the standards. To that end, since 2001, the ABA Commission on Immigration has operated the Detention Standards Implementation Initiative. The initiative recruits and trains groups (primarily lawyers) to visit, tour, and assess and report on compliance with the standards in detention facilities across the country. In addition, the Commission regularly corresponds with men and women in detention, including through a toll-free hotline. The Commission also operates three direct service pro bono programs that represent detained adults and children in their removal proceedings: the South Texas Pro Bono Asylum Representation Project (ProBAR) in Harlingen, Texas, Volunteer Advocates for Immigrant Justice (VAIJ) in Seattle, Washington, and the Immigration Justice Project (IJP) in San Diego, California. These programs provide the ABA Commission with extensive and timely information on recurrent problems in the immigration detention system.

Beyond its work on immigration detention, the ABA has been active in developing and publishing standards that establish basic parameters for promoting dignity, fairness, health, security, and compliance with the law within prison walls. ABA standards relating to prisoners include the comprehensive *Standards on the Treatment of Prisoners*, adopted by the House of Delegates in 2008.¹⁰ The *Standards on the Treatment of Prisoners* do not apply to immigration detention, but have informed the ABA's work on civil immigration detention standards. Other ABA standards include: *Legal Status of Prisoners Standards* (1981; 1985); *Mental Health Standards* (1986; 1989), Part X "Mentally Ill and Mentally Retarded Prisoners"; and *Medical and health care in jails, prisons, and other correctional facilities: a compilation of standards and materials* (1974). In the immigration context, the ABA has also adopted standards for children in custody: *Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States* (2004).

The ABA's expertise on immigration detention and on developing standards is widely acknowledged. In adopting these civil immigration detention standards, the ABA would make a further contribution to the rule of law, access to justice, and rights-respecting treatment of those in custody.

¹⁰ There are 23 sets of ABA Criminal Justice Standards. See http://www.americanbar.org/groups/criminal_justice/policy/standards.html.

The Need for Civil Immigration Detention Standards

Despite the DHS/ICE standards, immigration detainees continue to struggle with lack of access to representation and legal materials, inadequate medical care, and other issues. In a 2007 letter to DHS Secretary Michael Chertoff, ABA President Karen Mathis set forth numerous problems related to the treatment of immigration detainees.¹¹ Unfortunately, the same reports — and the situations that give rise to them — remain commonplace today.

Detainees report, for example, that telephone calls are prohibitively expensive and that detention officials monitor legal calls. In addition, ABA Commission staff and members have observed that telephones are often located in public spaces without partitions, preventing confidentiality in attorney-client communications. The ABA Commission also receives frequent reports regarding nonfunctioning telephones. As with telephone calls, detainees have significant concerns related to the confidentiality of legal mail. They report that incoming legal mail is opened outside their presence, and their outgoing legal mail is inspected. In addition, mail is often delayed or does not arrive at all, facilities limit the amount of mail that can be sent, and some facilities do not provide paper or envelopes. Detainees also report that law libraries are often closed and, when open, contain insufficient and outdated materials. Furthermore, legal materials are not accessible because computers are broken. Detainees also report that they lack sufficient access to libraries to prepare time-sensitive court filings and as a result miss filing deadlines.

Apart from legal access problems, in several facilities used by DHS/ICE, immigration detainees remain housed with individuals serving sentences for criminal convictions. Moreover, the overwhelming majority of immigration detainees are held in actual jails or in jail-like facilities. The ABA has consistently raised access to justice concerns related to access to legal counsel, legal materials, and courts. Immigration detainees also report that officials do not inform them about complaint processes and do not abide by grievance procedures. Some complaints are not answered at all, or they are answered with threatened loss of privileges or reclassification. The ABA Commission also receives numerous reports regarding insufficient medical and dental treatment, including medication not being received in a timely fashion, delayed treatment, and over-the-counter pain relievers offered in response to symptoms of any nature. Detainees also report unhealthy and unsanitary conditions, including lack of fresh air, insufficient and spoiled food, and overflowing toilets. In addition, they report that food does not meet medical or religious dietary needs, and that facility staff ban religious apparel.

Of particular concern are reports that some facility staff verbally and physically abuse detainees, and make discriminatory comments based on race, nationality, or sexual orientation. Detainees also report lack of sensitivity to the language needs of non-native English speakers, and to the effects of trauma on asylum seekers and torture survivors. Detainees also complain that facility staff do not intervene in fights, and impose group punishments such as lockdown without

¹¹ Letter from Karen J. Mathis, President, the American Bar Association, to Michael Chertoff, Secretary, US Department of Homeland Security (Jan. 31, 2007), available at http://www.americanbar.org/content/dam/aba/migrated/poladv/letters/immigration/2007jan31_de tenstandards_1.authcheckdam.pdf; detainee complaints on file with the Commission on Immigration.

disciplinary process. Detainees also report abuse by criminal inmates and by other immigration detainees. The continued problems with immigration detention require reform of the detention system, new standards, and more rigorous enforcement of those standards.

The Development of the Civil Immigration Detention Standards

On August 6, 2009, DHS/ICE announced plans to reform its detention system in order to create a “truly civil detention system” that reflected the agency’s legal authorities and the status of those in its custody.¹² At the time, ICE Director John Morton announced the goal of detaining noncitizens in facilities designed and operated specifically for immigration purposes and moving to new standards to reflect the new environment. He stated: “With these reforms, ICE will move away from our present, decentralized, jail-oriented approach to a system wholly designed for and based on ICE’s civil detention authorities.”¹³ ICE also issued a Fact Sheet which provided that the detention system would “no longer rely primarily on excess capacity in penal institutions.”¹⁴

The DHS/ICE announcement on detention reform followed the release in 2008 of its extensive performance-based national detention standards (PBNDS), which were based on ACA standards for pre-trial criminals. The PBNDS detail the outcomes that must be met in order for standards to be effectively implemented. In February 2012, DHS/ICE released updated and revised PBNDS standards.¹⁵ DHS/ICE has also developed civil detention principles — distinct from standards — which have been incorporated into its statements of objectives (SOOs) used to solicit proposals for select new detention facilities. ICE has indicated plans to open two new detention facilities — in addition to a facility opened in March 2012 in Karnes County, Texas — that it says will provide less restrictive detention environments, afford private space for attorney-client meetings, allow for more freedom of movement within the facilities; increase access to the out-of-doors; permit contact visits with family members, and ensure greater staff-detainee interaction, responsiveness to grievances, and access to consulates and pro bono legal services.¹⁶

¹² Nina Bernstein, *US to Reform Policy on Detention for Immigrants*, N.Y. TIMES, Aug. 5, 2009 available at <http://www.nytimes.com/2009/08/06/us/politics/06detain.html>; ICE Fact Sheet, *2009 Immigration Detention Reforms*, Aug. 6, 2009, available at http://www.ice.gov/pi/news/factsheets/2009_immigration_detention_reforms.htm.

¹³ Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review* (Oct. 2011), at 4 (hereinafter *Jails and Jumpsuits*), citing CQ Newsmaker Transcripts, “Immigration and Customs Enforcement Assistant Secretary John Morton Holds Conference Call to Announce Major Reforms Planned for the Immigration Detention System” (Aug. 6, 2009).

¹⁴ ICE, “Fact Sheet: 2009 Immigration Detention Reforms,” available at <http://www.ice.gov/news/library/factsheets/reform-2009reform.htm>.

¹⁵ ICE, *Performance-Based National Detention Standards: 2011*, <http://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf>.

¹⁶ ICE, “Statement Of Objectives Immigration Detention Reform, Request For Inter-Governmental Service Agreement (IGSA), Concept Proposal: Chicago” (undated), reprinted in *Jails and Jumpsuits* at 48.

While DHS/ICE's 2011 PBNDS are an improvement over previous versions, the agency has not pursued or adopted *civil* detention standards as part of its initiative to create a "truly civil detention" system. In October 2010, the ABA Commission on Immigration began the process of developing civil detention standards. It retained the law firm of Crowell & Moring LLP on a pro bono basis to assist in this process.

The ABA Commission established a broadly inclusive process, but also sought to expedite development of the standards in order to make them available in real time to support and to guide US immigration detention reform efforts. The Commission began the process of developing civil detention standards by conducting research into the immigration detention systems of other nations, international treaties on refugees and asylum-seekers, and the standards governing the detention of other "civil" detainee populations in the United States, including the mentally ill, juvenile offenders, and sex offenders. It also carefully reviewed the ABA's *Standards for the Treatment of Prisoners*.¹⁷

This research informed the Commission's development of civil immigration detention standards, but did not yield a set of standards from an analogous system that could be easily adapted for the US immigration detention system. Foreign detention models, for example, typically apply to far smaller populations. ABA prison standards, while more generous in some respects than current immigration detention standards, are not intended for civil detainees. Finally, standards devised for other categories of US civil detainee are not designed for — and are not appropriate for — immigration detainees. Overall, the Commission's research affirmed the need for the ABA to develop civil immigration detention standards.

In March 2011, the Commission on Immigration constituted an Advisory Group to assist and advise it crafting the civil immigration detention standards. The group consisted of Commission members, former ABA staff who had been central to the development of the ABA's original detention standards, a former INS commissioner, former Congressional staff, the commissioner of the New York City Department of Corrections, ABA members who helped to craft the model prisoner standards, experts in health and religious access standards, and international law scholars. Advisory Group subcommittees were tasked with conducting additional research and drafting sections of the standards. This process yielded successive drafts of standards that were critiqued and vetted by the Commission, Advisory Group and other experts. The Commission advised DHS/ICE of its progress throughout this process, invited key officials to meetings, and provided a draft of the standards to DHS/ICE for comment.

The Substance of the Standards

Unlike the PBNDS or the ABA's *Standards for the Treatment of Prisoners*, the ABA's civil immigration detention standards are not intended to be exhaustive. They incorporate by reference

¹⁷ American Bar Association, *Criminal Justice Standards on the Treatment of Prisoners* (Washington, DC, 2011), http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf.

other ABA standards and portions of the PBNDS, and draw on international legal standards. They attempt to outline how a civil detention system should look and operate, with the goal of offering DHS/ICE (in real time) a guide and framework for reforming the immigrant detention system, particularly in areas of concern to the ABA. The standards acknowledge and support the need for detention officials to ensure the safety of all residents and officers inside a facility. The ABA recognizes the logistical and financial challenges involved in detention reform. Nonetheless, it urges DHS/ICE to adopt these standards and to begin the process of incorporating them into its planning. A brief outline of the standards follows.

The standards' Guiding Principles (Section II) reflect the conviction that civil detention facilities and programs should approximate normal living conditions to the extent possible, while ensuring that residents appear at court hearings, can be removed (if so ordered) from the country, and do not present a danger to themselves or to others. This section provides that any conditions placed on noncitizens to ensure court appearances or to effect removal should be the least restrictive necessary to further these goals. It describes a system that would offer a continuum of strategies, programs and alternatives to meet these goals, up to and including detention. It provides that residents should not be held in jails or jail-like settings. It highlights the importance of access to legal counsel, materials and courts. It also emphasizes the need for rigorous oversight by DHS/ICE to ensure compliance with the standards.

Section III addresses the classification and placement process. This section provides for a rigorous, systematic, fact-based intake, classification, placement and review process. It provides that classification and placement decisions should reflect factors like the location of the resident's family and support systems, medical and mental health needs, and propensity for institutional violence. It would require that arriving residents be meaningfully informed of the rules and procedures of the facility. It would also require DHS/ICE to review its classification and placement decisions at regular intervals.

Section IV addresses the physical plant, environment and location of facilities. This section seeks to maintain the continuity of residents' normal lives to the extent possible. It requires facilities to provide adequate access to resources necessary for the well-being of their residents, including health care and legal services. It provides that facilities be clean, temperate, and safe, and that they provide residents with significant access to outdoor recreation, to natural light (inside the facilities), to privacy, and to their support systems.

Section V describes standards related to the daily life of residents. It provides for access to medications; legal materials; communal space; healthy, safe, nutritious and religiously-appropriate food; and outdoor recreation. It provides that residents can wear their own clothing. It allows for free movement within the facility (consistent with security and safety), and requires access to daily recreational activities.

Section VI attempts to ensure that residents can communicate with persons and institutions outside the facility, including family members, legal counsel, government officials, courts, non-governmental organizations (NGOs), government watch-dog and oversight agencies, and others.

Section VII sets standards for access to legal services, which is a prerequisite to access to justice and to the effective, humane operation of civil detention facilities. The section seeks to ensure that residents are able to access legal counsel, courts, witnesses, documents, translators, materials and legal orientation presentations. In order to facilitate access to legal services, this section provides for flexibility in the operation of facilities and confidentiality in all legal communications. It also recognizes the need for facilities to accommodate a heavy and unpredictable volume of legal communications, deliveries, visits, and other transactions.

Section VIII outlines standards for access to health care services, incorporating by reference many of the ABA *Standards for the Treatment of Prisoners* that address health care. It also sets forth civil detention standards that go beyond the relevant ABA standards for prisoners. These standards start from the premise that residents should have access to all necessary medical and mental health care. This section addresses the need for continuity of care, given that residents often pass quickly through individual facilities and the detention system overall.

Section IX sets standards that seek to facilitate religious practices and foster access to religious services. A centerpiece of these standards is the Religious Services Coordinator, a position intended to support, coordinate and facilitate religious practices and access to religious services for a rapidly changing population of residents, from diverse faith traditions, and with countless linguistic and cultural backgrounds.

Section X covers visitation issues. It seeks to ensure that residents can communicate and interact with people from outside the facility, including family, volunteers, and others. It would allow for visitation at convenient times and in ways that are comfortable to visitors and residents.

Section XI sets forth standards for facility administration and staffing. It covers staff recruitment, training, and conduct. It provides that facilities should employ staff in numbers sufficient to provide security for residents, while also minimizing restrictions on residents' movement. It also sets forth standards designed to ensure effective governmental oversight of privately owned or operated facilities.

Section XII presents standards to address residents' personal security, including the prevention of sexual assault and abuse; the prevention of harm; searches; discipline; the use of force; and serious illness and death of residents. The standards set limits on the conduct of residents and staff, while also authorizing staff to prevent and respond to harmful conduct by residents. The section highlights the importance of identifying and protecting residents who are especially vulnerable to harm.

Section XIII sets forth standards governing residents who need to be separated from the general population for administrative or disciplinary reasons. Administrative separation is intended to ensure the safety of residents, to protect property, and to promote the good order of the facility. Disciplinary separation can be utilized in response to a crime or serious violation of facility rules or procedures. The section covers decisions to separate residents, length of separation, and the standards that govern treatment of separated residents, including access to legal and health services.

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Section XIV calls for facilities to establish and maintain an effective process to address grievances. The section sets forth a three-part process consisting of meaningful and timely review of grievances; prohibition against retaliation for filing a grievance; and maintenance of channels of communication between residents and DHS/ICE.

Section XV describes the accountability and oversight needed to ensure the effective and humane operation of facilities and compliance with these standards. The section is intended to permit the evaluation of facilities against these standards. It focuses on access to facilities, facility records, and residents by legislators, the media, NGOs, foreign officials, and supranational organizations. It attempts to ensure that facilities operate in a fully transparent manner.

Conclusion

The resolution supports standards to govern and guide the US civil immigration detention system. The proposed standards would further the rule of law by ensuring that the rights of individuals in DHS/ICE custody are preserved and respected. They would also promote access to justice, the efficient use of government resources, and effective oversight of the immigration detention system.

Respectfully submitted,

Karen T. Grisez, Chair
Commission on Immigration
August 2012

GENERAL INFORMATION FORM

Submitting Entity: Commission on Immigration

Submitted By: Karen T. Grisez, Chair

1. Summary of Resolution(s).

The resolution supports the adoption of the ABA Civil Immigration Detention Standards, dated August 2012, which are standards to govern the treatment of persons in the US immigration detention system. These standards arise from the American Bar Association's (ABA's) longstanding leadership in ensuring access to justice for immigrant detainees, and in promoting fair and humane treatment for persons in custody.

The US Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) agency primarily detains persons who are in removal (deportation) proceedings. Persons in DHS/ICE custody are not facing criminal trials or serving prison sentences. Under the law, removal proceedings are civil in nature and the detention of immigrants serves to ensure their appearance at court and to effectuate their removal, not to punish them. The average number of persons detained by DHS/ICE each day exceeded 33,000 in 2011. DHS/ICE detained a total of 363,000 persons in FY 2010.

Despite DHS/ICE's civil legal authority, the US immigration detention system has traditionally held detainees in jails and in jail-like facilities that are administered according to American Correctional Association (ACA)-based standards for persons awaiting criminal trials. While DHS/ICE has initiated a process to reform its detention system, it has not adopted or crafted detention standards that reflect its civil immigration authority. The ABA Commission on Immigration has developed the civil immigration detention standards in order to promote access to justice and fair and humane treatment of persons in the immigration detention system.

The ABA has worked for many years to ensure that foreign nationals in the US detention system are treated humanely. Although updated several times in the intervening years, DHS/ICE's detention standards originated through a process of collaboration between the ABA, the US Department of Justice (DOJ), and DOJ's former Immigration and Naturalization Service (INS). The ABA worked closely with DOJ over the course of several years to craft the first meaningful set of standards to govern treatment of persons in immigration detention, focusing on four legal access standards: visitation, telephone access, group presentations on legal rights, and access to legal materials. The DHS/ICE detention standards, which have undergone several revisions, have not been codified in a statute or regulation.

Despite the DHS/ICE standards, immigration detainees continue to struggle with lack of access to representation and legal materials, inadequate medical care, and other

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issues. The continued problems with immigration detention require reform of the detention system, new standards, and more rigorous enforcement of those standards. The ABA's expertise on immigration detention and on developing standards is widely acknowledged. In adopting these civil immigration detention standards, the ABA would make a further contribution to the rule of law, access to justice, and rights-respecting treatment of those in custody.

2. Approval by Submitting Entity.

On April 18, 2012, the Commission on Immigration approved this resolution.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The resolution builds on the following existing Association policies, and would further the Association's commitment to providing legal protections and due process rights to noncitizens in detention.

- **Detention Standards:** Supports the issuance of federal regulations that codify the Department of Homeland Security Immigration and Customs Enforcement National Detention Standards, and supports improvement, periodic review, and increased oversight of detention standards implementation in order to ensure that detained noncitizens and their families are treated humanely and have meaningful access to counsel and the legal process (08M111B).
- **Detention:** Opposes detention of noncitizens in removal proceedings except in extraordinary circumstances. Supports use of humane alternatives to detention; the provision of prompt hearing for aliens denied release; mechanisms to ensure complete and accurate information for administrative review and judicial oversight; mechanisms to ensure full compliance with two Supreme Court decisions on indefinite detention (06M107E).
- **Detention:** Urges protection of the constitutional and statutory rights of detainees, and supports promulgating into regulation the four ICE detention standards relating to access to counsel and legal information and permitting independent organizations to visit detention facilities and meet privately with detainees to monitor compliance (02A115B).
- **Improving Asylum Process:** Asylum seekers should be detained only in extraordinary circumstances, and in the least restrictive environment necessary to ensure appearance at court proceedings; encourages ICE to explore alternative means

to ensure appearance at court proceedings, such as supervised pretrial release or bond (2/90).

5. What urgency exists which requires action at this meeting of the House?

The rapidly expanding use of immigration detention, continuing reports of poor conditions at and difficulty accessing counsel from detention facilities make this an urgently needed resolution. DHS/ICE has initiated a process to reform its detention system, and is currently contracting to build new detention facilities that are more civil in nature, but it does not have standards that reflect its civil immigration authority. The resolution will enable the ABA to urge adoption of new detention standards as well as policies appropriate to detaining individuals for civil violations of law.

6. Status of Legislation. (If applicable)

The ABA engages with DHS/ICE on an ongoing basis regarding conditions of detention. DHS/ICE is currently contracting to build new detention facilities that are more civil in nature, and adoption of these standards would enable the ABA to urge additional reforms as contracts are being put into place. Finally, the ABA is aware of ongoing Congressional interest in detention legislation.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Commission will advocate for adoption of the standards by DHS/ICE, as well as urge DHS/ICE to implement policies that are more appropriate to civil detention, including in their planning for the new detention facilities. The Commission will also urge Congress to move forward with appropriate legislation.

8. Cost to the Association. (Both direct and indirect costs)

Existing Commission and Governmental Affairs staff will undertake the Association's promotion of this recommendation, as is the case with other Association policies.

9. Disclosure of Interest. (If applicable)

No known conflict of interest exists.

10. Referrals.

This recommendation is being circulated to Association entities and Affiliated Organizations including:

Section of Administrative Law and Regulatory Practice
Criminal Justice Section
Commission on Domestic Violence

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Section of Family Law
General Practice, Solo, and Small Firm Division
Government and Public Sector Lawyers Division
Health Law Section
Commission on Hispanic Legal Rights & Responsibilities
Commission on Homelessness and Poverty
Section of Individual Rights & Responsibilities
Section of International Law
Judicial Division
Section of Labor and Employment Law
Law Student Division
Standing Committee on Lawyers Professional Liability
Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Section of Litigation
Division for Public Education
Center for Racial and Ethnic Diversity
Senior Lawyers Division
Section of State and Local Government
Young Lawyers Division
American Immigration Lawyers Association (AILA)
National Legal Aid and Defender Association (NLADA)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution supports the adoption of the ABA Civil Immigration Detention Standards, dated August 2012, which are standards to govern the treatment of persons in the US immigration detention system.

2. Summary of the Issue that the Resolution Addresses

The ABA Civil Immigration Detention Standards arise from the American Bar Association's (ABA's) longstanding leadership in ensuring access to justice for immigrant detainees, and in promoting fair and humane treatment for persons in custody.

The US Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) agency primarily detains persons who are in removal (deportation) proceedings. Persons in DHS/ICE custody are not facing criminal trials or serving prison sentences. Under the law, removal proceedings are civil in nature and the detention of immigrants serves to ensure their appearance at court and to effectuate their removal, not to punish them. The average number of persons detained by DHS/ICE each day exceeded 33,000 in 2011. DHS/ICE detained a total of 363,000 persons in FY 2010.

Despite DHS/ICE's civil legal authority, the US immigration detention system has traditionally held detainees in jails and in jail-like facilities that are administered according to American Correctional Association (ACA)-based standards for persons awaiting criminal trials. While DHS/ICE has initiated a process to reform its detention system, it has not adopted or crafted detention standards that reflect its civil immigration authority. The ABA Commission on Immigration has developed the civil immigration detention standards in order to promote access to justice and fair and humane treatment of persons in the immigration detention system.

The ABA has worked for many years to ensure that foreign nationals in the US detention system are treated humanely. Although updated several times in the intervening years, DHS/ICE's detention standards originated through a process of collaboration between the ABA, the US Department of Justice (DOJ), and DOJ's former Immigration and Naturalization Service (INS). The ABA worked closely with DOJ over the course of several years to craft the first meaningful set of standards to govern treatment of persons in immigration detention, focusing on four legal access standards: visitation, telephone access, group presentations on legal rights, and access to legal materials. The DHS/ICE detention standards, which have undergone several revisions, have not been codified in a statute or regulation.

Despite the DHS/ICE standards, immigration detainees continue to struggle with lack of access to representation and legal materials, inadequate medical care, and other issues.

3. Please Explain How the Proposed Policy Position will address the issue

The continued problems with immigration detention require new, civil immigration detention standards, and more rigorous enforcement of those standards. The ABA's expertise on immigration detention and on developing standards is widely acknowledged. In adopting these civil immigration detention standards, the ABA would make a further contribution to the rule of law, access to justice, and rights-respecting treatment of those in custody.

4. Summary of Minority Views

None to date.