U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

11065.1: Review of the Use of Segregation for ICE Detainees

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1. **Purpose/Background.** This directive establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) review of ICE detainees placed into segregated housing.

   This directive is intended to complement the requirements of the 2011 Performance-Based National Detention Standards (PBNDS 2011), the 2008 Performance-Based National Detention Standards (PBNDS 2008), the 2000 National Detention Standards (NDS), and other applicable ICE policies.

   The most recent articulation of ICE policy governing segregation is the PBNDS 2011 standard "Special Management Units" (Standard 2.12), which establishes the responsibilities of detention facility staff with respect to segregation placement, review, and notification to ICE, and which also articulates ICE policy regarding appropriate management of segregated detainees. Also relevant is the PBNDS 2011 standard "Disciplinary System" (Standard 3.1), which prescribes appropriate levels of disciplinary segregation for various offenses.

2. **Policy.** Placement of detainees in segregated housing is a serious step that requires careful consideration of alternatives. Placement in segregation should occur only when necessary and in compliance with applicable detention standards. In particular, placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist.

   ICE shall ensure the safety, health, and welfare of detainees in segregated housing in its immigration detention facilities. Consistent with the agency's detention standards and relevant special housing policies, ICE shall take additional steps to ensure appropriate review and oversight of decisions to retain detainees in segregated housing for over 14 days, or placements in segregation for any length of time in the case of detainees for whom heightened concerns exist based on known special vulnerabilities and other factors related to the detainee's health or the risk of victimization. The security and safety of ICE employees, facility staff members, detainees, and the public remains the first consideration in the exercise of the procedures and requirements of this Directive.

3. **Definitions.** The following definitions apply for the purposes of this Directive:

3.1. **Administrative Segregation.** Administrative segregation is a non-punitive form of separation from the general population for administrative reasons. Administrative segregation is authorized only as necessary to ensure the safety of the detainee, facility staff, and other detainees; the protection of property; or the security or good order of the facility, and therefore should be for the briefest term and under the least restrictive conditions practicable, consistent with the rationale for placement. Generally, detainees in administrative segregation shall receive the same privileges as detainees housed in the general population, consistent with safety and security concerns. Administrative segregation may be necessary for, among other reasons, detainees requiring or requesting protective custody from others who may be likely to harm them; detainees awaiting an investigation or hearing for a violation of facility rules; detainees scheduled for release, removal, or transfer within 24 hours; or detainees presenting a clear threat to the security of the facility.

3.2. **Disciplinary Segregation.** Disciplinary segregation is a punitive form of separation from the general population for disciplinary reasons. Disciplinary segregation is authorized only pursuant to the order of a facility disciplinary panel, following a hearing in which the detainee is determined to have committed serious misconduct in violation of a facility rule, and only consistent with the Disciplinary Severity Scale from the applicable ICE detention standards, and only when alternative dispositions would inadequately regulate detainee behavior.

3.3. **Special Vulnerabilities**. Detainees with special vulnerabilities include those who are known to be suffering from mental illness or serious medical illness; who have a disability or are elderly, pregnant, or nursing; who would be susceptible to harm in general population due in part to their sexual orientation or gender identity; or who have been victims – in or out of ICE custody – of sexual assault, torture, trafficking, or abuse.

4. **Responsibilities.**

4.1. **The ERO Custody Management Division (CMD)** has responsibilities under:

1) Section 5.2 (Segregation Placements Related to Disability, Medical or Mental Illness, Suicide Risk, Hunger Strike, Status as a Victim of Sexual Assault, or other Special Vulnerability);

2) Section 7.2 (Custody Management Division);

3) Section 7.5 (Detention Monitoring Council); and

4) Section 8 (Training).

4.2. **The ERO Field Operations Division** has responsibilities under:

1) Section 7.1 (ERO Field Operations);

2) Section 7.5 (Detention Monitoring Council); and

3) Section 8 (Training).

4.3. ERO Field Office Directors (FODs) have responsibilities under:

1) Section 5.1 (Extended Segregation Placements);

2) Section 5.2 (Segregation Placements Related to Disability, Medical or Mental Illness, Suicide Risk, Hunger Strike, Status as a Victim of Sexual Assault, or other Special Vulnerability);

3) Section 5.3 (Field Office Reports to ICE Headquarters);

4) Section 5.4 (Notification of a Detainee's Release from Segregation); and

5) Section 6 (Facility Compliance).

4.4. The ICE Health Service Corps (IHSC) has responsibilities under:

1) Section 5.1 (Extended Segregation Placements);

2) Section 5.2 (Segregation Placements Related to Disability, Medical or Mental Illness, Suicide Risk, Hunger Strike, Status as a Victim of Sexual Assault, or other Special Vulnerability);

3) Section 7.3 (IHSC Coordination and Review);

4) Section 7.5 (Detention Monitoring Council); and

5) Section 8 (Training).

4.5. The Office of Detention Policy and Planning (ODPP) has responsibilities under:

1) Section 7.4 (Office of Detention Policy and Planning); and

2) Section 7.5 (Detention Monitoring Council).

4.6. The Detention Monitoring Council (DMC) has responsibilities under:

1) Section 7.5 (Detention Monitoring Council).

4.7. The Segregation Review Coordinator has responsibilities under:

1) Section 7.5 (Detention Monitoring Council).

5. Field Review of Detainee Segregation Status.

5.1. Extended Segregation Placements.

1) The FOD shall take steps to ensure that he or she is notified in writing by the facility administrator whenever a detainee has been held continuously in segregation for 14 days, 30 days, and at every 30-day interval thereafter, or has been held in segregation for 14 days out of any 21 day period.

2) ICE personnel, including IHSC personnel and Detention Service Managers (DSMs), should also notify FODs whenever they become aware of a detainee who meets these criteria and has not yet been the subject of a notification to the FOD.

3) Upon receipt of such notification, the FOD shall immediately commence a review of the detainee's segregation case, including, where relevant, the full detention file and EARM records.

4) In cases of administrative segregation, the review shall include an assessment of whether the current placement is appropriate based on the applicable detention standards (including the substantive grounds for placement and the procedural requirements for status reviews) and ICE policies, including:

   a) Whether the placement is based on a specified threat to the safety of the detainee or others, or to the secure and orderly operation of the facility. The facility must have articulated the facts behind the placement decision;

   b) Whether a supervisory officer completed the administrative segregation order prior to placement, with a copy immediately provided to the detainee;

   c) Whether documented reviews by a supervisor, including an interview with the detainee, have occurred within the first 72 hours of placement into segregation and every week thereafter; and

   d) Whether, as part of the documented reviews, the facility administrator or assistant administrator has provided written approval of any decision to continue involuntary segregation of a detainee for protective reasons (at facilities governed by the NDS, written approval by a supervisory officer is sufficient).

5) In cases of disciplinary segregation, the review shall include an assessment of whether the current placement is appropriate based on the applicable detention standards and ICE policies, including:

   a) Authorization by an order of the facility disciplinary panel following a disciplinary hearing;

   b) Consistency of the disciplinary panel order with the Disciplinary Severity Scale from the applicable ICE detention standards; and

c) Documented reviews by a supervisor every week after initial placement, including an interview with the detainee, to determine whether the detainee has received all services to which he or she is entitled.

6) If review of the segregation case indicates that the detainee is Limited English Proficient (LEP), the FOD shall also consider whether the initial placement or ongoing retention in segregation were the result of insufficient interpretation, including during interactions with facility staff, or due to other LEP related communication difficulties.

7) In his or her evaluation of the placement, the FOD must consider the initially identified reason(s) for placement, any new relevant information from subsequent facility reviews, and answers to the FOD's inquiries, and shall determine whether the continued placement in segregation is necessary, excessive, or in violation of applicable detention standards. As extended segregation should be used only when necessary, after engaging in an individualized assessment of the case, the FOD must consider as part of his or her evaluation whether a less restrictive housing or custodial option is appropriate, and, in coordination with ICE headquarters when necessary, arrange for utilization of such less restrictive options that are appropriate and available, including:

   a) In consultation with the detention facility administrator, the return of the detainee to the general population;

   b) In consultation with the detention facility administrator, options to limit isolation, including additional out of cell time and the ability to participate in group activities;

   c) Transfer to another facility where the detainee can be housed in the general population or in an environment better suited to the needs of the detainee, such as a facility that has dedicated medical beds in its clinic, a medical observation unit, or better medical or mental health staffing, a facility that has a dedicated protective custody unit, or a facility that has a Special Management Unit with enhanced privileges; or

   d) Consistent with requirements of mandatory detention, public safety, and other immigration enforcement considerations, release from custody.

8) If, at any time during the review, the FOD learns that the segregation placement meets any of the criteria described in subsection 5.2.2, the FOD shall immediately follow the procedures outlined in subsection 5.2.

5.2. Segregation Placements Related to Disability, Medical or Mental Illness, Suicide Risk, Hunger Strike, Status as a Victim of Sexual Assault, or other Special Vulnerability.

1) A detainee's age, physical disability, sexual orientation, gender identity, race, or religion may not provide the sole basis for a decision to place the detainee in involuntary segregation. An individualized assessment must be made in each case. Unaccompanied alien children must be treated in accordance with applicable statutes, regulations, and policies.

2) The FOD shall take steps to ensure that he or she is notified in writing as soon as possible by the facility administrator, but no later than 72 hours after the initial placement into segregation, whenever any of the following criteria have been met:

   a) A detainee has been placed in administrative segregation on the basis of a disability, medical or mental illness, or other special vulnerability, or because the detainee is an alleged victim of a sexual assault, is an identified suicide risk, or is on a hunger strike; or

   b) A detainee placed in segregation for any reason has a mental illness or a serious medical illness or serious physical disability.

3) ICE personnel, including IHSC personnel and DSMs, should also notify FODs whenever they become aware of a detainee who meets the above criteria and has not yet been the subject of a notification to the FOD.

4) Upon receipt of such notification, the FOD shall immediately notify CMD, in writing, of the segregation case, for dissemination to IHSC and the other members of the DMC subcommittee and the Segregation Review Coordinator, to permit expedited review. In addition, the FOD shall arrange for notification of the detainee's attorney, if the detainee's record indicates that he or she has an attorney.

5) Upon receipt of such notification, IHSC shall:

   a) For detainees with a medical or mental illness, or identified as being a suicide risk or on a hunger strike, evaluate the appropriateness of the placement and ensure appropriate health care is provided. Such detainees shall be removed from segregation if the IHSC determines that the segregation placement has resulted in deterioration of the detainee's medical or mental health, and an appropriate alternative is available.

   b) For detainees with a disability, evaluate the appropriateness of the placement and, in coordination with the FOD, consult with facility staff about any necessary accommodations; and

   c) For all such detainees, review the detainee's treatment plan, monitor the detainee's care on an ongoing basis, and review segregation placement at least every 14 days, in coordination with the FOD and the members of the DMC subcommittee.

6) The FOD, in consultation with IHSC where appropriate, shall:

   a) Ensure that any setting used to house detainees who are at risk for suicide or other self-harm permits close supervision and minimizes opportunities for self-harm.

   b) For a detainee placed in administrative segregation due to a special vulnerability, as defined above in section 3.3, ensure that the placement is only used as a last resort and when no other viable housing options exist.

c) For a detainee placed in administrative segregation because he or she was alleged to have been a victim of sexual assault, ensure the detainee is not held in administrative segregation on that basis for more than five days, except in highly unusual circumstances or at the detainee's request.

d) For any detainee meeting the criteria in 5.2.2, including detainees in segregation at their own request, conduct a review to assess whether any less restrictive housing or custodial options are appropriate and available based on an individualized assessment of medical and security concerns involved in each case, and, in coordination with ICE headquarters when necessary, arrange for utilization of such less restrictive options that are appropriate and available, including:

i) In consultation with the detention facility administrator, return to the general population;

ii) In consultation with the detention facility administrator, options to limit isolation, including additional out of cell time and the ability to participate in group activities;

iii) Transfer to another facility where the detainee can be housed in the general population or in an environment better suited to the needs of the detainee, such as a facility that has dedicated medical beds in its clinic or better medical or mental health staffing, a facility that has a dedicated protective custody unit, or a facility that has a Special Management Unit with enhanced privileges;

iv) Transfer to a hospital; or

v) Consistent with requirements of mandatory detention, public safety, and other immigration enforcement considerations, release from custody.

7) The FOD shall complete the same reviews as are required by Section 5.1 whenever a detainee has been held continuously in segregation for 14 days, 30 days, and at every 30 day interval thereafter.

5.3. Field Office Reports to ICE Headquarters.

1) The FOD shall develop a written report of his/her findings and any actions taken, and transmit it to CMD, with respect to detainees who meet the following criteria:

a) All detainees held continuously in segregated housing for more than 14 days or for 14 days out of any 21 day period who:

i) The FOD determines should have their segregation placements reviewed by headquarters;

ii) Meet one of the criteria listed in Section 5.2.2; or

iii) Are detained at facilities that have been designated by the DMC subcommittee for heightened review.

b) All detainees held continuously in segregated housing for more than 30 days, and at 30-day intervals thereafter in the unusual circumstance where a detainee is held in segregated housing for 60 days or longer.

2) At a minimum, the FOD's written report will include:

a) A clear articulation of the reason(s) for the segregation placement, whether those reasons were valid, and whether they remain valid;

b) Whether the placement is in compliance with applicable detention standards (including the substantive grounds for placement and the procedural requirements for status reviews);

c) For detainees meeting one of the criteria listed in Section 5.2.2, a description of the disability, illness, special vulnerability or other relevant factor;

d) For detainees placed in administrative segregation due to a special vulnerability, as defined above in section 3.3, whether the placement is used only as a last resort and when no other viable housing options exist;

e) For detainees placed in administrative segregation because he or she was alleged to have been a victim of a sexual assault, whether the placement is justified by extraordinary circumstances or at the detainee's request;

f) Options for alternate housing or custodial arrangements that were considered; and

g) An assessment of the best course of action.

3) With respect to detainees held continuously in segregation for more than 14 days or for 14 days out of any 21 day period but not meeting the criteria in subsection 5.3.1, the FOD shall report to CMD the date of the placement, the reason for the placement, the date the FOD completed his or her review, and any additional information the FOD believes is noteworthy.

4) Upon request, the FOD will provide CMD with all documentation from the facility used to support the segregation decision and reasons for continued placement.

5) Reports required by this subsection shall be transmitted as soon as possible but no later than three work days after the end of the 14 day, 30 day or subsequent intervals.

5.4. Notification of a Detainee's Release from Segregation.

1) The FOD shall take steps to ensure that he or she is notified in writing by the facility administrator whenever a detainee who has been the subject of a prior notification pursuant to Section 5.1 or 5.2 is subsequently released from segregation.

2) The FOD shall notify CMD of any such developments, so that the DMC subcommittee can consider whether to cease its review of the segregation placement. After a detainee has been released from segregation, the FOD will not be expected to provide further information to CMD unless so requested.

6. Facility Compliance. It is the responsibility of the FOD to ensure all detention facilities in his or her area of responsibility (AOR) are aware of the notification requirements under this policy, as well as their obligations under relevant detention standards and ICE policies on the appropriate use of segregation.

7. ICE Headquarters Oversight and Reporting Regarding Use of Segregation.

7.1. ERO Field Operations. ERO Field Operations shall assist FODs in carrying out their duties under this policy, including by providing guidance on available transfer and/or release options and other ICE resources.

7.2. Custody Management Division.

1) CMD shall assist the DMC subcommittee and Segregation Review Coordinator by collecting and disseminating segregation reports and notifications received from the FODs, and by developing a system for use by the DMC subcommittee and Segregation Review Coordinator that will maintain information about the segregation placements.

2) CMD, with assistance from IHSC, shall compile and maintain a list of relevant facility resources and capabilities. This list shall include facilities that have dedicated protective custody housing units; segregation housing units with substantial out-of-cell time, commingling, or other enhanced privileges; and information about facility medical resources and capabilities, including the extent of medical and mental health staffing, and the number of dedicated medical beds, medical housing units, and appropriate cells for monitoring high-risk or suicidal detainees.

3) Using available resources and considering any applicable statutory requirements, CMD, in coordination with IHSC, other ICE components, and FODs, shall on an ongoing basis seek to enhance the availability of facility resources and capabilities described in 7.2.2 above.

7.3. IHSC Coordination and Review.

1) IHSC shall assist CMD in compiling information about facility medical resources and capabilities, including the extent of medical and mental health staffing, and the number of dedicated medical beds, medical housing units, and appropriate cells for monitoring high-risk or suicidal detainees.

2) IHSC shall review cases identified by FODs or other ICE personnel as raising disability, medical or mental health concerns in the context of segregation. Based on its review, IHSC shall provide feedback to FODs and the DMC subcommittee on appropriate placement for detainees in light of their disability or medical or mental health conditions.

3) IHSC shall work with facilities and ERO Field Operations to determine suitable accommodations for detainees with disabilities and to ensure appropriate treatment for detainees with medical or mental health conditions.

7.4. Office of Detention Policy and Planning. In the context of serving as co-chair of the DMC subcommittee, ODPP shall participate in the review of segregation placements, the analysis of data, the preparation of reports, and the development of remedial plans and new policies as necessary. In addition, ODPP shall consult with a variety of stakeholders with respect to policy, planning, and implementation.

7.5. Detention Monitoring Council.

1) CMD and ODPP shall co-chair a subcommittee of the DMC that will ensure an effective, timely and comprehensive review of the segregation reports sent to Headquarters from the FODs. The subcommittee shall include representatives from ERO Field Operations, IHSC, the ICE Office of the Principal Legal Advisor, the Office of Professional Responsibility, and the ICE Office of Acquisition Management. A representative from the DHS Office for Civil Rights and Civil Liberties (CRCL) may participate in subcommittee meetings as CRCL deems appropriate, but CRCL shall not use information ICE shares with CRCL pursuant to such participation in any CRCL investigation or inquiry.

2) The DMC shall designate a Segregation Review Coordinator who will manage and track the segregation reports sent by the FODs and related information, for presentation to the DMC subcommittee.

3) On an on-going basis, members of the DMC subcommittee shall review the FOD segregation reports and other available information regarding detainees who meet the following criteria:

    a) All detainees held continuously in segregated housing for over 14 days or for 14 days out of any 21 day period who:

        i) Are noted by the FOD as requiring headquarters review;

ii) Meet one of the criteria listed in Section 5.2.2;

iii) Are detained at facilities that have been designated by the DMC subcommittee for heightened review;

iv) Are nominated for review by any DMC member; or

v) Are nominated for review by the DHS Officer for Civil Rights and Civil Liberties through a formal referral.

b) All detainees held continuously in segregated housing for over 30 days, and at 30 day intervals thereafter.

4) On an ongoing basis, members of the DMC subcommittee shall collaborate in evaluating whether a particular detainee's placement in segregation is appropriate or warrants reconsideration, obtaining additional information as needed, and effectuating less restrictive housing or custodial options when appropriate. The DMC subcommittee shall meet as needed to assess progress in reviewing segregation placements, to consider particular cases, and to ensure timely and effective intervention when necessary.

5) The DMC subcommittee shall designate facilities for heightened review based on an assessment of such factors as whether they have a disproportionate number (compared to current ICE averages) of detainees in segregation, make disproportionate use of long-term segregation, or have a record of using segregation inappropriately or of not being in compliance with standards with respect to segregation.

6) The DMC subcommittee shall review significant findings from oversight inspections regarding the use of segregation at detention facilities, including monitoring by DSMs, CMD inspections, Office of Detention Oversight inspections, and CRCL investigations.

7) On a quarterly basis, the DMC subcommittee shall prepare a report to the full DMC and the Director, compiling data about the numbers of detainees held in segregation who met the criteria listed in 5.1 and 5.2.2, the reasons for their segregation, the results of the reviews of particular cases, areas of concern regarding particular cases or facilities that warrant further examination, and other relevant information.

8) On at least a quarterly basis, the full DMC shall convene to discuss national trends and information received about the use of segregation in ICE detention facilities and lessons learned from reports and data presented to the DMC, and to develop and recommend immediate and long-term remedial plans as necessary.

8. Training.

1) ERO Field Operations shall provide training to FODs about their responsibilities under this policy.

2) IHSC shall provide training to Field Medical Coordinators about their responsibilities under this policy.

3) CMD shall provide training to DSMs about their responsibilities under this policy.

9. Authorities/References.

9.1. 2011 Performance-Based National Detention Standards, including the following provisions:

1) Standard 2.12 "Special Management Units."

2) Standard 3.1 "Disciplinary System."

3) Standard 4.6 "Significant Self-Harm and Suicide Prevention and Intervention."

9.2. 2008 Performance-Based National Detention Standards, including the following provisions:

1) Standard 2.15 "Special Management Units."

2) Standard 3.19 "Disciplinary System."

3) Standard 4.24 "Suicide Prevention and Intervention."

9.3. 2000 National Detention Standards, including the following provisions:

1) Standard 2.13 "Special Management Unit (Administrative Segregation)."

2) Standard 2.14 "Special Management Unit (Disciplinary Segregation)."

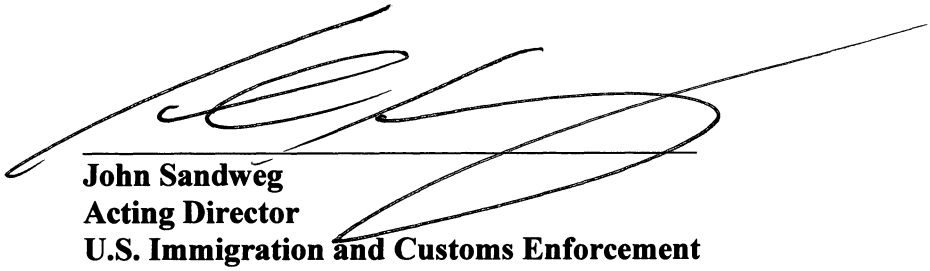
3) Standard 2.5 "Disciplinary Policy."

4) Standard 3.3 "Suicide Prevention and Intervention."

9.4. ICE Policy 11062.1, "Sexual Abuse and Assault Prevention and Intervention" (May 11, 2012).

9.5. ICE Policy 11022.1, "Detainee Transfers" (January 4, 2012).

10. **No Private Right Statement.** This document is an internal policy statement of ICE. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



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