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12  
13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

15  
16 CARLOS MURILLO VEGA,

17 Plaintiff,

18 v.

19 MANAGEMENT & TRAINING  
20 CORPORATION,

21 Defendant.

Case No. 3:21-cv-01770-GPC-LR

**DECLARATION OF BRADFORD  
E. HANSEN IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO  
PARTIAL MOTION FOR  
SUMMARY JUDGMENT**

Date: April 21, 2023  
Time: 1:30 p.m.  
Judge: Hon. Gonzalo P. Curiel  
Ctrm: 2D

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1 I, Bradford E. Hansen, declare:

2 1. I am a retired prison warden with over 42 years of correctional work in  
3 institutions as well as central headquarters at the Nebraska Department of  
4 Corrections. My career has been focused on ensuring that prisons run effectively and  
5 that both correctional officers and inmates are kept safe in a high-stress and high-risk  
6 environment. I have substantial expertise in the standards, policies, and practices  
7 relating to detention. I have been retained by Plaintiff's counsel in this case to serve  
8 as an expert on these topics.


9 2. If called as a witness at trial, I could and would testify competently to  
10 the conclusions and opinions expressed in the expert reports I submitted in  
11 connection with this litigation.

12 3. Attached as Exhibit 1 is a true and correct copy of my Expert Report,  
13 dated December 19, 2022.

14 4. Attached as Exhibit 2 is a true and correct copy of my Supplemental  
15 Expert Report, dated January 13, 2022.

16  
17 I declare under penalty of perjury under the laws of the United States that the  
18 foregoing is true and correct.

19  
20 Dated: March 17, 2023

By:   
Bradford E. Hansen

# EXHIBIT 1



**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

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**CARLOS MURILLO VEGA**

Plaintiff,

v.

**MANAGEMENT & TRAINING CORPORATION**

Defendant.

**Case No. 3-21-cv-01770-GPC-LR**

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**EXPERT REPORT OF  
BRADFORD E. HANSEN**

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**December 19, 2022**

**TABLE OF CONTENTS**

I.	INTRODUCTION & SUMMARY OF OPINIONS .....	1
II.	MY QUALIFICATIONS.....	3
III.	OVERVIEW OF THE INCIDENT .....	5
IV.	METHODOLOGY .....	9
V.	ANALYSIS AND OPINION.....	10
A.	Civil Immigration Standards Such as PBNDS are Designed to Protect Detainees and Safeguard Humane Conditions .....	10
B.	PBNDS Requires the Use of Administrative Segregation as a Last Resort.....	12
C.	MTC Violated PBNDS in Its Initial and Continued Placement of Mr. Murillo to Protective Custody and Failing to Provide Justification for Such Placement .....	18
D.	MTC Violated PBNDS by Failing to Provide Detainees in Protective Custody with Programs and Services .....	23
E.	MTC Violated PBNDS by Failing to Provide Sufficient Recreation Time and Failing to Maintain Records of Out-Of-Cell Time .....	24
F.	MTC Violated PBNDS by Allowing Commingling Between Protective Custody Detainees and Detainees on Disciplinary Segregation .....	26
VI.	CONCLUSION .....	28

**I. INTRODUCTION & SUMMARY OF OPINIONS**

1. My name is Brad Hansen. I am a retired prison warden with over 42 years of correctional work in institutions as well as central headquarters at the Nebraska Department of Corrections. My career has been focused on ensuring that prisons run effectively and that both correctional officers and inmates are kept safe in a high-stress and high-risk environment. I have substantial expertise in the standards, policies, and practices relating to detention. I have been retained by Plaintiff's counsel in this case to serve as an expert on these topics.
2. I have been asked to render my opinion on the nature, purpose, and oversight of civil immigration detention, the detention standards in place to safeguard humane conditions of confinement, and whether the facts in the record demonstrate that policies and practices of the Management and Training Corporation ("MTC") violate the detention standards of care and confinement agreed upon in MTC's contract with the United States Immigrations and Customs Enforcement ("ICE") for operation of a private detention facility.
3. My opinions, as outlined herein, are informed by my knowledge, skill, experience, training, and education, including over four decades of experience in this area as a prison warden. My opinions are also based on my knowledge of the ICE detention standards and other standards relating to detention such as the 2011 Performance-Based National Detention Standards (revised in 2016) ("PBNDS"), the 2008 Performance-Based National Detention Standards, and the American Correctional Association's Performance Based Standards for Adult Local Detention Facilities (4<sup>th</sup> edition).
4. My opinions are also informed by over 50 hours of review of the relevant detention records, policies, and procedures, the California Department of Justice ("DOJ") report, the U.S. Department of Homeland Security's Office of the Inspector General ("OIG") report, testimony and exhibits, discovery responses, the complaint and other court documents in this case. I also visited the Imperial Regional Detention Facility ("IRDF") on October 5, 2022, and toured the Alpha and Bravo units, which had been used as Special Management Units ("SMU"), and the Mike unit, which was representative of the

dorm General Population unit. A list of materials I have relied upon in forming my opinions is attached as **Exhibit A**.

5. I was asked to assess whether MTC followed established detention standards, such as the PBNDS, to safeguard detainees that are placed in Protective Custody. Based on my experience, education, training, and review of pertinent materials in this matter, I conclude as follows:
  - a. **One**, generally accepted industry standards governing civil immigration detention (including the PBNDS) are important to protect detainees and safeguard humane conditions of confinement, *not* to rehabilitate, punish or reform detainees.
  - b. **Two**, MTC's use of Administrative Segregation as a default, long-term solution for Protective Custody does not comply with the PBNDS, which requires the use of Administrative Segregation as a last resort, and does not meet the needs of the detainees or the facility.
  - c. **Three**, MTC violated the PBNDS and generally accepted industry standards in making its initial and continued placement of Mr. Murillo in Protective Custody, and by failing to provide the necessary verification and documentation to justify their classification decisions.
  - d. **Four**, MTC violated the PBNDS and generally accepted industry standards by failing to provide detainees in Protective Custody with programs and services available to those in General Population.
  - e. **Five**, MTC violated the PBNDS and generally accepted industry standards by failing to provide at least one hour of recreation time per day and to maintain accurate and consistent records of Mr. Murillo's out-of-cell time.
  - f. **Six**, MTC violated the PBNDS and generally accepted industry standards by allowing commingling between Protective Custody detainees and detainees on Disciplinary Segregation.
6. Further details regarding these conclusions are provided in the report below.
7. My work on this matter is ongoing and my opinions are based on the information I have reviewed to date. It is my understanding that additional documents and information may be forthcoming during the course of this litigation. I reserve the right to supplement my opinions as additional relevant information becomes available to me.

## **II. MY QUALIFICATIONS**

8. I have over 42 years of experience in all aspects of corrections, including assisting state correctional agencies and county jails in developing emergency preparedness training and security improvements. I retired as warden of the Tecumseh State Correctional Institution, Tecumseh, Nebraska, on August 2, 2019. Since then, I have been retained as a Crisis Intervention/Conflict Resolution Instructor, a Use of Force instructor for Jail Administrators, and an expert witness. My CV, attached as **Exhibit B**, further details my background and qualifications.
9. The complete list of cases for which I have testified as an expert witness is attached as **Exhibit C**.
10. The rate sheet detailing the financial compensation I am receiving in this matter is attached as **Exhibit D**. My payment is not tied to the conclusions that I reach.
11. I started my career as a correctional officer for the Nebraska Department of Corrections in 1977. I worked in Nebraska prisons over the next 20 years, from 1977 to 1997, first as a correctional officer and later as a Unit Administrator, responsible for managing all inmate housing units and developing prison standards and operating procedures.
12. I was promoted to Department Emergency Management Supervisor and held that position for the next 19 years from 1997 to 2016. In that position, I managed the Emergency Tactical teams, which responded to prison emergencies. The Emergency Tactical teams included the Special Operations Response Team (“SORT”), Correctional Emergency Response Team (“CERT”), and the Crisis Negotiation Team (“CNT”). I developed training techniques for decision-making and assault strategies. I was responsible for conducting critical incident reviews to determine what went well and what could have been done better.
13. In 2003, I instituted the Division of Investigation and hired two full-time law enforcement officers to conduct investigations, including criminal, administrative, workplace harassment, and Prison Rape Elimination Act (“PREA”) investigations. I reviewed all reports and submitted them to proper authorities. My responsibilities



included developing and conducting training for institutional investigators, reviewing policy and making recommendations for staff oversight and accountability, reviewing and approving approximately 75 investigations per year, and reviewing use of force reports that rose to the level of possible abuse or unlawful use of force.

14. In 2012, I was given the additional responsibility of Training Administrator. As Training Administrator, I supervised the Department Training Academy, which included new officer training, in-service training, leadership training for supervisors, leadership training for executive staff, and further training to assist in the development of all staff. I implemented the Law Enforcement and Training Association's ("LETRA") Crisis Management training, which taught officers how to communicate with inmates, de-escalate crisis events, conduct conflict resolution, and interview inmates to assist in determining if they are suicidal or experiencing a psychotic event. Staff were taught to document such interactions and refer to mental health specialists and shift supervisors when necessary.
15. From 2016 to 2019, I was appointed as a warden at the Tecumseh State Correctional Institution, a 1000-bed maximum and medium custody institution, which included a 196-bed restrictive housing unit. As the warden, I oversaw about 420 staff members.
16. I have been a consultant with LETRA from 1997 to the present. LETRA is a training organization in Campbell, California, specializing in emergency preparedness training, crisis intervention/conflict resolution, and use of force training. LETRA conducts emergency preparedness and use of force assessments in state prisons and county and city jails. I conducted emergency preparedness assessments and training in the South Carolina Department of Corrections, the Delaware Department of Corrections, Douglas County Jail in Omaha, Nebraska, the New Mexico Department of Corrections, and the Wyoming Department of Corrections. I conducted crisis intervention and conflict resolution training for the California Youth Authority and the Hawaii Department of Corrections. I taught use of force training at the Santa Clara County Jail in California.
17. I have done consultant work for the National Institute of Corrections ("NIC") from 1999 to 2008. I conducted instructor certification in crisis negotiations for the South Dakota

Department of Corrections, the New Mexico Department of Corrections, and the Nevada Department of Corrections. In 2008, I conducted an emergency preparedness audit for the Washington State Department of Corrections.

18. Since retiring in 2019, I have accepted various engagements as an expert witness in litigation matters.

### **III. OVERVIEW OF THE INCIDENT**

19. On December 13, 2019, Plaintiff Carlos Murillo Vega was taken into ICE custody. On that day, Mr. Murillo was transferred from Calipatria State Prison to Imperial Regional Detention Facility (“IDRF”). Mr. Murillo was serving an eight-month prison sentence and was set to be released on December 15, 2019.
20. IRDF is operated by the Management Training Corporation (“MTC”). MTC is a for profit company that contracts with ICE to imprison people whose immigration status in the United States is contested. MTC’s contract with ICE requires the for-profit corporation to follow the PBNDS.
21. On December 13, 2019, MTC completed an ICE Custody Classification Worksheet for Mr. Murillo indicating that Mr. Murillo would receive a “High” security classification, which would result in him being assigned to a High-level housing unit.<sup>1</sup> The classification worksheet for Mr. Murillo also indicated that there were “no” “Special Vulnerabilities and Management Concerns” impacting Mr. Murillo.
22. On the same day, Sergeant Carlos Lopez completed an Administrative Segregation order for Mr. Murillo. Before an Administrative Segregation order could be imposed, MTC was required to outline the circumstances and the names of any witnesses to events leading to placement on Administrative Segregation.<sup>2</sup> Sergeant Lopez wrote: “On December 13, 2019, at approximately 1200 hours, detainee Murillo-Vega, Carlos A039-

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<sup>1</sup> MTC000800-MTC000801.

<sup>2</sup> PBNDS § 2.12(V)(A)(2)(a), (c) (“Prior to a detainee’s actual placement in administrative segregation, the facility ... shall complete the administrative segregation order ... detailing the reasons for placing a detainee in administrative segregation... All memoranda, medical reports and other relevant documents shall be attached to the administrative segregation order.”).

806-063, arrived from Calipatria State Prison and was admitted to IRDF-MTC. Upon conducting R & D intake interview on 12-13-19, detainee Murillo-Vega advised/stated that he would need PC [Protective Custody] housing due to his previous SNY [special needs yard] housing history.”<sup>3</sup>

23. On the same day, Mr. Murillo signed and wrote on the form titled “Detainee Protective Custody Request Form” that he requested Protective Custody.<sup>4</sup>
24. Mr. Murillo states that at the time of his arrival and initial assessment he was told by MTC staff that he had a choice regarding where he wanted to be housed: General Population or Protective Custody.<sup>5</sup> Mr. Murillo states that the MTC staff told him that General Population was dangerous and that he would be safer in Protective Custody, so he decided to go into Protective Custody.<sup>6</sup> Mr. Murillo was not informed of the conditions of Protective Custody at MTC.<sup>7</sup> Further, Mr. Murillo was not told that he might remain in Protective Custody for the duration of his detention, nor was he informed that by initially choosing Protective Custody he would be required to remain there for the duration of his detention.<sup>8</sup>
25. On the same day, Mr. Murillo was assigned to the Special Management Unit (“SMU”). The SMU housed detainees assigned to Administrative Segregation status or Disciplinary Segregation. Mr. Murillo was placed in a single cell that measures approximately 7 feet by 12 feet.<sup>9</sup> He was secured in his cell approximately 22 hours a day.<sup>10</sup>
26. Much of the time that Mr. Murillo was allowed to access the “outdoors” was spent in an exercise cage, which is a narrow, fenced-in area with little to no exercise equipment,

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<sup>3</sup> MTC000596.

<sup>4</sup> MTC000603.

<sup>5</sup> Murillo Tr. at 199:15-18.

<sup>6</sup> *Id.* at 199:15-22.

<sup>7</sup> *Id.* at 34:11-34:14, 36:9-36-15.

<sup>8</sup> *Id.* at 34:11-34:14, 199:15-120:8.

<sup>9</sup> DSC\_0014.JPG, DSC\_0015.JPG.

<sup>10</sup> MTC000394-MTC000407, MTC000685-MTC000726, MTC004263-MTC004268.

measuring approximately 9 feet by 15 feet.<sup>11</sup> Individuals assigned to SMU were often completely alone during their out-of-cell time.<sup>12</sup>

27. Detainees who are assigned to General Population are housed in large dormitory housing units, which include double bunks in open sleeping areas. Detainees assigned to the General Population were allowed to roam freely between the bed area, rest rooms, day rooms, and exercise areas. The General Population exercise areas were large (approximately 12 times bigger than the exercise cage in the SMU)<sup>13</sup> and had exercise equipment to use. General Population detainees had the ability to talk to staff face to face without barriers such as a cell door.<sup>14</sup>
28. Mr. Murillo remained in Protective Custody in the segregation unit until October 28, 2020, when he was reassigned to an open dorm unit called the “Mike” unit.<sup>15</sup> Mr. Murillo remained on Protective Custody status while living in the Mike unit.<sup>16</sup>
29. Mr. Murillo lived in the Mike unit for approximately two weeks.<sup>17</sup> On November 11, 2020, Mr. Murillo was moved back to SMU, where he again lived in a restricted single-cell environment.<sup>18</sup>
30. Mr. Murillo complained about his placement in restrictive housing throughout his detention at the IRDF, both before and after his transfer to the Mike Unit. On March 3, 2020, he filed a grievance stating “I feel I’m not getting the same privileges because I am in the hole. We don’t have access to the library. I have been here 5 months and I have been there one time and I was only limited to one book. I don’t have any access to socialize with anyone since we don’t have access to the day room. I’m not on disciplinary action, but yet I am being treated like if I was.”<sup>19</sup> Edward Ruiz, a deputy

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<sup>11</sup> DSC\_0027.JPG, DSC\_0028.JPG.

<sup>12</sup> Cortez Tr. at 70:21-71:7

<sup>13</sup> MTC001649.

<sup>14</sup> DSC\_0076.JPG, DCS\_0078.JPG.

<sup>15</sup> MTC000593.

<sup>16</sup> MTC000593 (stating that Mr. Murillo was released “to an open dorm housing mike unit dorm *under Protective Custody* status”) (emphasis added).

<sup>17</sup> MTC000356.

<sup>18</sup> MTC000358.

<sup>19</sup> MTC000264.

facility administrator at MTC, responded: “the Protective Custody program had been closely looked into to provide detainees who are housed under Protective Custody with similar opportunities as the General Population. We currently have planned outside recreation to the ‘big yard’ for two hours from 5 p.m. to 7 p.m. by the two groups that are designated now in PC. Also, we are going to allow PC detainees to attend the library from 9 pm to 10 pm so PC detainees can check out books. We have plans for the mini recreation yard to have one half of the separated fenced off areas to be removed and have a basketball hoop and another work out station. The new schedule will begin tomorrow.”<sup>20</sup>

31. On November 11, 2020, Mr. Murillo filed a grievance requesting that he be moved back to the MIKE unit. MTC staff responded that they would not be present the next day and would talk to him once they return to work.<sup>21</sup>
32. On November 16, 2020, Mr. Murillo again signed and submitted a request to be transferred to General Population.<sup>22</sup> His request was denied on November 18, 2020 by the SMU committee.<sup>23</sup> No ICE officials were in attendance at the November 18, 2020 SMU committee meeting.<sup>24</sup>
33. On November 19, 2020, Mr. Murillo filed another grievance, stating that MTC staff had not responded to his request to be transferred to the Mike unit. On November 20, 2020, Jose Bulteman, Chief of Security at MTC, responded, stating that “due to Murillo’s initial request to be placed on PC status and the length of time you have spent under this status, your placement in the General Population is denied.”<sup>25</sup>

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<sup>20</sup> MTC000264-MTC000265.

<sup>21</sup> MTC000311.

<sup>22</sup> MTC000362.

<sup>23</sup> MTC000362.

<sup>24</sup> MTC003945.

<sup>25</sup> MTC000314.



34. On November 20, 2020, Murillo filed another grievance stating that he wanted to move to General Population and wanted the same privileges as General Population.<sup>26</sup> MTC staff responded stating the issue was already addressed.<sup>27</sup>
35. On November 25, 2020, Murillo filed an appeal of his grievance denial. Mr. Builteman denied Mr. Murillo's appeal regarding his request to transfer to General Population because of the "Safety and Security of yourself and the facility."<sup>28</sup>
36. On December 3, 2020, Murillo filed a grievance with R. Lopez, an ICE officer, asking again to move to General Population. Mr. Lopez responded that he had "no control over what happens inside the facility, I can only assist with the removal process."<sup>29</sup>
37. On December 11, 2020, Murillo filed a grievance to the warden complaining that the facility did not have the appropriate accommodations for detainees assigned to Protective Custody. Warden Sixto Marrero responded stating that "SMU is designated to house those in PC and the very few that proceed through the disciplinary process. As such, we also need to provide all the essential operations and programs while located in the Unit. This also means that we need to structure the programs to comply with the ICE standards and MTC policy. At this time, we do not have a smaller unit that can accommodate those very few classified as PC."<sup>30</sup>
38. Mr. Murillo was released from detention in February 2021. Mr. Murillo remained in Protective Custody status the entire nearly fourteen months that he was imprisoned at the IRDF.

#### **IV. METHODOLOGY**

39. I was asked to assess whether MTC followed established detention standards, such as the PBNDS, to safeguard detainees that are placed in Protective Custody. Plaintiff alleges that by failing to comply with the PBNDS, MTC violated California Government Code

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<sup>26</sup> MTC000319.

<sup>27</sup> MTC000318.

<sup>28</sup> MTC000315-MTC000316.

<sup>29</sup> MTC000326.

<sup>30</sup> MTC000336.

Section 7320, which states that “any private detention facility operator shall comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility’s contract for operations.”

40. There is a well-established methodology for addressing whether a prison, jail, or other detention center complies with applicable standards. The first step is to determine applicable duties by reviewing relevant law and regulations, department policies and procedures, professional standards, and widely accepted correctional standards and practices. The second step is to determine whether the detention facility and its staff complied with the identified duties by reviewing documents and other available information. I have used these steps as a warden when conducting inspections and after-action reviews, as a training administrator implementing and evaluating training courses, and as head of the division of investigations evaluating use of force complaints.
41. This method has also been used to audit correctional institutions for accreditation by the American Correctional Association and the National Commission on Correctional Health Care. It is also used as a significant component in critical incident reviews following major crises or emergencies in jails and prisons. This method has long been used in conducting critical incident reviews, emergency readiness of institutions, security audits, and criminal and administrative investigations.
42. Applying this method confirms that MTC did not apply with PBNDS or other applicable standards governing civil immigration detention, and that the harms resulting to Mr. Murillo were a predictable failure of MTC’s failure to comply with applicable standards.

## **V. ANALYSIS AND OPINION**

### **A. Civil Immigration Standards Such as PBNDS Are Designed to Protect Detainees and Safeguard Humane Conditions**

43. ICE requires private detention facilities that it contracts with to comply with various sets of detention standards. The particular set of standards applicable to each detention facility is negotiated with and incorporated into ICE’s contracts with its operator. For the IRDF, where Mr. Murillo was detained, MTC agreed with ICE that MTC would comply

with the PBNDS 2011, as revised in 2016. Sections 2.2 and 2.12 of the PBNDS, which include the provisions most relevant to this case, are attached as **Exhibit E**.

44. The primary purpose of issuing, developing, and requiring adherence to these standards is to protect detainees and safeguard humane conditions of confinement. In particular, PBNDS reflects what ICE described as its attempt to detain people “in the most humane manner possible with a focus on providing sound conditions and care.”<sup>31</sup> When announcing the revisions to the PBNDS in 2016, ICE further stated that the revision was made “to improve medical and mental health services, increase access to legal services and religious opportunities, improve communication with detainees with no or limited English proficiency, improve the process for reporting and responding to complaints, and increase recreation and visitation.”<sup>32</sup>
45. What underlies all detention standards, including the PBNDS, as well as state and federal law, regulations, and long-standing practices across American corrections is a broad and critical duty of the detention facility staff to protect the individuals detained in the facility. The duty to protect includes protection from harm by prison staff, other detainees, as well as the known risk of self-harm.
46. It is important for the staff of detention facilities to fulfill their duty to protect because one’s ability to protect oneself is severely limited when detained. For instance, in a fire, detainees locked in cells cannot evacuate themselves; either staff unlock doors and provide a path to safety, or detainees may die of smoke inhalation. Similarly, an acutely ill detainee cannot take himself to an emergency room; either staff provides that inmate with access to medical or mental health care, or the results may be fatal. Detainees are dependent on staff for everything from showers and food to visits and medical and mental health care.
47. It is also crucial for staff to follow established policies and procedures in order to prevent undue psychological effects of long-term segregation (which are further discussed in

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<sup>31</sup> “Preface,” *Performance-Based National Detention Standards 2011*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

<sup>32</sup> *Id.*

Section B). Detainees are not authorized to determine their own custody classification or housing unit placement. They rely upon staff to make objective and unbiased decisions based on established rules, regulations, and practices.

48. In order to carry out this duty to protect, the detention facility staff need to be trained to ensure that they are well equipped to manage the day-to-day issues that might arise in detention facilities. Failure to adequately train staff may create an unsafe environment for those who are detained in the facilities.
49. The importance of this duty to protect is even stronger in immigration detention facilities like IRDF, because immigration detainees are held for civil purposes. Their detention is not premised on an accusation or conviction of a crime. The immigration proceedings for which they are waiting or in which they are involved are civil, not criminal. Conditions of confinement in immigration detention, therefore, cannot be punitive in nature. In other words, the purpose of civil immigration detention is not to rehabilitate, punish or reform detainees.
50. In fact, the California legislature enacted Government Code Section 7320 in order to ensure that private detention facilities adhere to the minimum detention standards of care and confinement, which reflects the facility operators' duty to protect. In this way, Government Code Section 7320 provides accountability in private detention facilities, and protects against the risk that private detention facilities may otherwise prioritize maximizing profits over providing safe and humane conditions

#### **B. PBNDS Requires the Use of Administrative Segregation as A Last Resort**

51. SMU—or Restrictive Housing Units (“RHU”) as they were previously called—are common in prisons, jails, and detention facilities across the United States. While different facilities may have different names for the confinement of inmates or detainees in the SMU, there are two general categories of confinement: Disciplinary Segregation and Administrative Segregation. Disciplinary Segregation is used to house those inmates who have violated institutional rules and are being punished by having their normal activities restricted for a certain number of days. Administrative Segregation houses detainees who need segregation from the General Population for other purposes including

(i) awaiting investigation for a violation of facility rule, (ii) presenting a threat to the security of the facility, (iii) medical needs, and (iv) intermediate placement for those being released from Disciplinary Segregation to General Population. Administrative Segregation can also be used to place detainees in Protective Custody, in limited circumstances.

52. Lengthy stays in a segregation unit and restrictive conditions of confinement are not necessary to run a detention facility, as an increasing number of detention facilities and detention authorities across the United States have recognized. In the vast majority of detention facilities in the United States, detainees in Disciplinary Segregation are no longer left to languish in segregation units for years with no opportunity to earn their way out through participation in programming and good behavior. The length of time detainees are placed in segregation has been reduced, and their ability to earn additional privileges from demonstrating good behavior has improved. These “privileges” include longer out-of-cell time, more phone calls, recreation with other inmates in segregation, additional showers, and the ability to converse with other detainees’ face to face (as opposed to through cracks of the cell door or air vents). These changes have been made in an effort to reduce the amount of time a detainee is placed by him or herself for 21 or more hours a day, as facilities have become more aware of the mental health issues arising from such segregation.
53. Conditions of confinement for detainees in Administrative Segregation have also improved across the United States. Detainees with mental health issues are placed in specialized mental health units where trained staff can manage them. For detainees in Protective Custody, who must be placed in the least restrictive environment possible (while still being protected) per institutional policies and procedures (including that of IRDF), many detention facilities no longer place them in segregation units but instead in housing units where they can live with other Protective Custody detainees and receive similar benefits as General Population detainees. Most facilities, including IRDF, also require that detainees placed in Protective Custody enjoy similar privileges as General Population, including recreation time, library time, meals in the day room with other Protective Custody detainees, regular access to showers, specific day room time where



Protective Custody detainees can play board games, and the ability to attend religious services. The PBNDS, which governs IRDF, requires: “detainees who have been placed in Administrative Segregation for Protective Custody shall have access to programs, services, visitation, counsel, and other services available to the General Population to the maximum extent possible.”<sup>33</sup> Hence, Protective Custody detainees’ out-of-cell time should be at minimum 8 hours a day, similar to that of General Population detainees. These detainees are not segregated from the General Population for disciplinary reasons and thus cannot and should not be subjected to the same conditions as those in Disciplinary Segregation.

54. A major factor behind these changes is the correction industry’s growing understanding of the damaging effects of long-term placement in an isolated environment. Even if segregation units are not formally classified as “solitary confinement” by the facilities, the isolation that detainees in segregation units experience is undeniable and bears all the hallmarks of a solitary confinement. Detainees in segregation have extraordinarily limited personal interactions, such as speaking to each other through a cell vent or through a crack in the door and talking to staff who stop by periodically. Beyond that, the detainees are locked in a small cell by themselves 21 or more hours each day. They go out to shower by themselves and exercise by themselves a limited number of times each week. Detainees in the segregation unit are deprived of meaningful contact with others.
55. The harms of this kind of segregation are well-documented and well-known. According to the VERA Institute of Justice, (1) solitary confinement can lead to serious and lasting psychological damage; (2) solitary confinement is particularly harmful for people with preexisting mental illness; (3) psychological harm may worsen the longer someone stays in solitary confinement; (4) negative mental health repercussions can persist long term; and (5) solitary confinement is associated with an increased risk of self-harm.<sup>34</sup> Many other studies, including the “Effects of Solitary Confinement on the Well Being of Prison

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<sup>33</sup> PBNDS § 2.12(V)(A)(1)(9).

<sup>34</sup> “The Impacts of Solitary Confinement,” *April 2021 Evidence Brief*, VERA Institute (Apr. 2021), <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>.

by Applied Psychology OPUS”<sup>35</sup> and “The research is clear: Solitary confinement causes long-lasting harm by the Prison Policy Initiative,<sup>36</sup> have reached similar conclusions. These findings are also consistent with what I have observed through my 42 years of working in corrections—I saw first-hand the deleterious effects of long-term segregation.

56. When ICE revised the PBNDS in 2016, it made substantial changes regarding the use of segregation units (Section 2.12 “Special Management Units”), largely to reflect the evolving evidence and increased awareness of the harms of solitary confinement, and the resulting reforms to limit the use of restrictive housing.<sup>37</sup> For instance, the revisions include: (1) a multi-disciplinary panel of facility staff, including facility leadership, medical and mental health professionals, and security staff, will meet weekly to review all segregation placements; during the meeting, the committee will review each detainee’s circumstances individually to ensure all staff are aware of the detainee’s status, current behavior, and physical and mental health, and to consider whether any change in status is appropriate; (2) a detainee may not remain in pre-Disciplinary Segregation for longer than the maximum term permitted for the most serious offense charged, absent compelling circumstances, and time served in pre-Disciplinary Segregation will be deducted from the ultimate disciplinary sanction; (3) previously an optimal provision, detainees must be evaluated by a medical professional prior to placement in an SMU (or when that is infeasible, as soon as possible and no later than within 24 hours of placement); and (4) a facility standing committee will regularly evaluate SMU policies and practices.<sup>38</sup>
57. The PBNDS requires that using segregation units for Protective Custody should be a last resort for those needing Protective Custody. For instance, Section 2.12. II. 4 of the PBNDS states that while “Administrative Segregation may also be available to detainees for the purpose of providing ‘Protective Custody,’” “[a] detainee shall be placed in

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<sup>35</sup> Mary Murphy Corcoran, “Effects of Solitary Confinement on the Well Being of Prison Inmates,” *Applied Psychology Opus* (2002), [https://wp.nyu.edu/steinhardt-appsych\\_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/](https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/).

<sup>36</sup> Tiana Herring, “The research is clear: Solitary confinement causes long-lasting harm,” *Prison Policy Initiative* (Dec. 8, 2020), [www.prisonpolicy.org/blog/2020/12/08/solitary\\_symposium/](http://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/).

<sup>37</sup> *2011 Operations Manual ICE Performance-Based National Detention Standards*, U.S. Immigration and Customs Enforcement (Accessed on Dec. 15, 2022), <https://www.ice.gov/detain/detention-management/2011#tabl>.

<sup>38</sup> *Id.*

‘Protective Custody’ status in Administrative Segregation *only when there is documentation and supervisory approval that it is necessary to protect a detainee from harm and that no reasonable alternatives are available.*” (emphasis added). Further, Section 2.12(V)(A) of the PBNDS confirms that “Administrative Segregation status is a nonpunitive status in which restricted conditions of confinement are required only to ensure the safety of detainees or others, the protections of property, or the security and good order of the facility.”

58. The PBNDS also contemplates that using segregation units for Protective Custody should not be a long-term solution. For instance, Section 2.12(V)(A)(1)(c) of PBNDS requires that “[e]ach facility shall develop procedures to consider continued placement in Protective Custody as well as provisions for release from Protective Custody when appropriate.” Section 2.12(V)(A)(3)(a) of the PBNDS likewise requires that within 72 hours of the detainee’s initial placement in Administrative Segregation, a supervisor shall conduct a review to determine whether segregation is warranted. IRDF’s written standard operating procedures mirror these provisions of the PBNDS.
59. MTC violated the above PBNDS standards as well as their own policies and procedures by using Administrative Segregation as a long-term solution for Protective Custody. Mr. Murillo spent nearly 14 months in Administrative Segregation in Protective Custody at IRDF, except for approximately two weeks in October and November of 2020.<sup>39</sup> The deputy facility administrator Edward Ruiz admitted in his deposition that it was MTC’s policy to always house Protective Custody detainees at SMU.<sup>40</sup>
60. The Department of Homeland Security Office of Inspector General (“OIG”), which conducted an unannounced visit to IRDF in February 2020 (while Mr. Murillo was in custody at IRDF), also confirmed that IRDF was using Administrative Segregation as a long-term solution for detainees in Protective Custody.<sup>41</sup> At the time of their inspection,

<sup>39</sup> MTC000596, MTC000593, MTC000356.

<sup>40</sup> Ruiz Tr. at 145:20-146:10.

<sup>41</sup> Off. of Insp. Gen., OIG-21-12, *ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility* (Dec. 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-12/OIG-21-12-Dec20.pdf>, at pp. 4-5; see also Cal. Dep’t of Just., *The California Department of Justice’s Review of Immigration Detention in California* (Jan. 2021), <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2021.pdf>.

IRDF held 16 detainees in Administrative Segregation. Of those 16, 11 had been held in Administrative Segregation for more than 60 days. Two of the 11 had been held in Administrative Segregation for more than 300 days, even though the facility had not re-established the need for prolonged placement—in other words, staff did not substantively document any justification for continued placement in segregation.

61. MTC also violated the PBNDS by not seeking alternative, less restrictive housing for Protective Custody detainees, including Mr. Murillo, before placing them in Administrative Segregation in the SMU. Mr. Ruiz testified that the SMU committee had not discussed any alternative housing options for Protective Custody for Mr. Murillo,<sup>42</sup> nor is there any evidence in the record indicating that MTC considered alternative placements for Mr. Murillo. Indeed, the Administrative Segregation order filled out on December 13, 2019, does not indicate that MTC staff considered any alternative placements.<sup>43</sup> The detainee Protective Custody request form dated December 13, 2019, also does not indicate that MTC considered alternative placements.<sup>44</sup> The SMU review documents for Mr. Murillo also lack any indication that MTC staff ever considered alternative placements for Mr. Murillo.<sup>45</sup>
62. MTC staff failed to consider alternative placements for Mr. Murillo even though record evidence indicates alternative housing placements were available. As Mr. Ruiz admitted, the Mike unit, which was in fact used to house Protective Custody detainees including Mr. Murillo for two weeks, was a reasonable alternative to Administrative Segregation.<sup>46</sup>
63. In addition, between 2015 and approximately March 2020, the IRDF had used a Charlie unit (a high/medium-high General Population dorm) as a housing option for high custody individuals who were in need of protection but did not want to be in a restrictive housing,<sup>47</sup> while another unit was used as a high/medium-high General Population dorm for those with active gang affiliations.<sup>48</sup> Such an arrangement would have provided

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<sup>42</sup> Ruiz Tr. at 100:7-10.

<sup>43</sup> MTC000596.

<sup>44</sup> MTC000603.

<sup>45</sup> MTC000366-MTC000389, MTC000604-MTC000684.

<sup>46</sup> Ruiz Tr. At 141:6-21.

<sup>47</sup> Veloz Tr. at 243:25-247:11.

<sup>48</sup> Veloz Tr. At 148:20-154:19, 243:25-247:11; Rodriguez Tr. At 42-48.

adequate protection for detainees like Mr. Murillo. Mr. Veloz testified that he did not remember any instance in which a Protective Custody detainee who moved to a Charlie dorm was harmed.<sup>49</sup> In fact, many individuals without violent criminal histories or gang affiliations were categorized as high/medium-high custody under the ICE Custody Classification Worksheet, which indicates that Mr. Murillo could have been safely housed in a General Population dorm.<sup>50</sup> In my experience, many of the detainees classified “high custody” under the PBNDS are not dangerous or violent. Such an option could and should have been offered as a less restrictive placement for Mr. Murillo, but was not.

64. Mr. Veloz identified an additional route for protecting detainees from harm without subjecting them to placement in the SMU that was also never considered for Mr. Murillo: placement in a General Population dorm and assignment to a bed near the officer’s station.<sup>51</sup> This is another option that could and should have been offered as a less restrictive placement for Mr. Murillo, but was not.
65. MTC’s staff’s failure to consider alternative housing placements also impacted detainees other than Mr. Murillo. Indeed, the OIG report confirmed that MTC staff did not seek any alternative, less-restrictive housing for detainees in Administrative Segregation, as required by the PBNDS.

**C. MTC Violated PBNDS in Its Initial and Continued Placement of Mr. Murillo to Protective Custody and Failing to Provide Justification for Such Placement**

66. MTC is required to follow the PBNDS Section 2.2 (Custody Classification System) and PBNDS Section 2.12 (Special Management Units) in assessing which detainees should be assigned to Protective Custody.<sup>52</sup> To comply with those standards, MTC is required to conduct an “individualized assessment” of a detainee before he or she could be placed in Protective Custody.<sup>53</sup> In making this assessment, MTC is required to consider “not only of a detainee’s custody classification, but [ ]the detainee’s general case status, disciplinary

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<sup>49</sup> Veloz Tr. at 154:3-19.

<sup>50</sup> Veloz Tr. at 8:15-108:19, 110:4-110:10.

<sup>51</sup> Veloz Tr. At 155:16-159:23.

<sup>52</sup> PBNDS § 2.2.

<sup>53</sup> PBNDS § 2.12(V)(A)(1).



record, housing, special needs, adjustment to institutional living opportunities for voluntary work assignments and general well-being” in assessing a detainee’s initial and continued classification.<sup>54</sup> The PBNDS further requires that the classification decision be made “based on verifiable and documented data,” and not on “unverified personal opinion of officers” or “unconfirmed and unverified information provided by the detainee.”<sup>55</sup> MTC’s own policies and procedures incorporate all such requirements of the PBNDS.<sup>56</sup>

67. In addition, established best practices require that classification decisions are supported by substantive written assessment. Two principles underlying good classification decisions are that (1) the facility needs as much information as possible to make a quality decision; and (2) the reasons for a Protective Custody classification decision should be reflected in written documentation. The requirement that such considerations are reflected in written documentation is important because it ensures that staff have complied with the requirement to review all relevant information in making a decision and that detainee is appropriately informed about the basis of the classification decision. Indeed, within the detention system, it is generally understood that the absence of documentary evidence justifies a strong inference that no in-depth discussions surrounding the Protective Custody determination in fact occurred.
68. MTC violated PBNDS, their own policies, and established best practices in their initial classification of Mr. Murillo to Protective Custody without conducting the required individualized assessment. The *only* justification for assigning Mr. Murillo to Protective Custody appears to be a statement in the Administrative Segregation Order indicating that: “Upon conducting R&D initial intake review interview on 12-13-19 detainee Murillo-Vega advised/stated that he would need PC housing due to his previous SNY [Special Needs Yard] housing history.”<sup>57</sup> This statement is insufficient to comply with PBNDS standards, MTC’s own policies and procedures, or accepted best practices. A detainee’s experience in a prior state prison system should be reviewed and assessed on

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<sup>54</sup> PBNDS § 2.2(I).

<sup>55</sup> PBNDS § 2.2(V)(C)(2).

<sup>56</sup> MTC002669.

<sup>57</sup> MTC000596.

an individual basis. But the order contains no information concerning why Mr. Murillo may have made that request, whether there was any factual basis for the request, or whether Mr. Murillo understood what conditions were like in the segregated units at MTC (*e.g.*, it reflects no information indicating that MTC advised Mr. Murillo that if he were placed in Protective Custody, his opportunities for freedom of movement, social interactions, and programming would be severely limited). Indeed, Classification Supervisor Ramon Veloz testified that he did not know of any factual basis that would require Mr. Murillo to be placed in Protective Custody.<sup>58</sup> Mr. Veloz admitted that he did not know that at Calipatria state prison, Mr. Murillo had been in 50/50 SNY, which is a dormitory housing unit, as opposed to a traditional SNY, which is a segregation unit, even though such information was essential to Mr. Murillo's housing placement because—as Mr. Veloz admitted—a person in a 50/50 SNY would be less likely to require Protective Custody at IRDF than someone who was in the traditional SNY.<sup>59</sup> The evidence also reveals that Mr. Murillo was not informed and did not understand what the conditions in MTC's Protective Custody housing would be like or that by choosing Protective Custody initially, detainees would likely be in Protective Custody for their entire detention period.<sup>60</sup>

69. MTC also violated PBNDS, their own policies, and established best practices in their continued classification and assignment of Mr. Murillo to Protective Custody. PBNDS requires that Protective Custody classifications are revisited regularly with sufficient analysis and documentation.<sup>61</sup> Every segregation review should be an opportunity for discussion with the Protective Custody detainees to find a way for them to live in General Population. If a detainee requests to move to General Population, the staff should discuss with the detainee the reasons for the requests and explore the costs and benefits of the decision. After an extensive discussion, if the detainee maintains that he or she wants to move to General Population, the detainee should generally be afforded an opportunity to live in General Population.

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<sup>58</sup> Veloz Tr. at 268:3-271:5.

<sup>59</sup> Veloz Tr. at 268:3-271:5.

<sup>60</sup> Veloz Tr. at 23:22-226:24, 276:4-276:10.

<sup>61</sup> PBNDS § 2.2(III)(4); 2.2.(V)(E).

70. MTC failed to comply with these requirements. MTC staff convened each week to review the status of those detainees that are housed in SMU. As part of these reviews, MTC staff was required to complete Administrative Segregation review forms to document the detainee's current status, evaluate whether the detainee could be returned to General Population, and explain any necessary changes.<sup>62</sup> MTC staff, however, consistently refused to conduct the required individualized assessment of each detainee. Instead, MTC staff completed simple checklists with "yes/no" answers to questions such as whether the detainee had access to showers and meals, and whether visits from medical personnel were being conducted. MTC's weekly assessment forms did not prompt MTC staff to consider—and left no room for them to provide a written assessment of—whether the detainee needed to remain in Protective Custody. Even after Mr. Murillo had filed multiple grievances seeking to be released from the SMU, MTC staff continued to robotically check off the box on these forms indicating that Mr. Murillo's initial reason for his SMU placement (i.e., that he requested to be in Protective Custody) remained valid.<sup>63</sup> Other evidence also shows that MTC staff did not conduct meaningful assessments concerning whether a detainee needed to remain in Protective Custody. For example, the meeting minutes for the December 18, 2019 SMU Committee Meeting (the meeting at which Mr. Murillo's initial placement in the SMU would have been discussed) reveal that MTC staff discussed 21 different detainees in 30 minutes, indicating that the "assessment" for any detainee lasted just over one minute.<sup>64</sup> This is not sufficient.
71. MTC also violated PBNDS, their own policies, and established best practices by refusing to conduct a meaningful assessment of Mr. Murillo's assignment to Protective Custody in light of the repeated grievances Mr. Murillo filed requesting to be transferred to General Population. Mr. Murillo repeatedly raised concerns about his unnecessarily restrictive placement in administrative confinement beginning in March 2020.<sup>65</sup> On November 11, November 16, November 19, November 20, November 25, December 3 and December

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<sup>62</sup> See, e.g., MTC000367.

<sup>63</sup> See, e.g., MTC000367.

<sup>64</sup> Ruiz Tr. at 98, 18-20.

<sup>65</sup> MTC000264.

11 of 2020, Mr. Murillo requested to be removed from Protective Custody and placed in General Population.<sup>66</sup> As Mr. Murillo wrote in his November 16, 2020 request, he wanted to transfer to General Population because “I’m not on disciplinary and I feel I should not be in the whole[sic] if I don’t have to be. I’m not a gang member, so I feel I could be okay in General Population plus I don’t have any dirty paperwork.”<sup>67</sup>

72. MTC repeatedly denied Mr. Murillo’s requests without providing reasoned explanations for their refusal to transfer Mr. Murillo to General Population.<sup>68</sup> On November 19, 2020, Mr. Murillo filed a grievance indicating that he has been trying “to move to [Mike] and I have no response yet it’s been a week and I have no answer.”<sup>69</sup> On November 20, 2020, Mr. Builteman responded stating that Mr. Murillo’s request to be removed from SMU-Protective Custody “was reviewed and considered by the SMU Committee on 11-18-20, denied and referred to the ICE-COR for final disposition, of which was also declined. Reasons for your request being declined are that Safety and Security of yourself and the Facility. Based on your initial request to be placed on PC status and the length of time you have spent under this status, your placement in the General Population – High Custody is not considered to be a safe environment for you.”<sup>70</sup> There is no document in the record memorializing the November 18, 2020 meeting, nor is there any record reflecting what risks Mr. Murillo may have faced in General Population. At his deposition, Mr. Builteman claimed that his recommendation for Mr. Murillo to remain in SMU was based on general comments from other officers about a “wreck” Mr. Murillo got into it with the Sureños (a gang organization that operates in some detention centers). But Mr. Builteman had no recollection of which officers made these general comments and could not point to any contemporaneous evidence substantiating his claim.<sup>71</sup>
73. Moreover, the SMU Committee’s purported determination that Mr. Murillo could not be transferred to General Population because he had spent time in Protective Custody amounts to an institutional policy that once a detainee spends any time in Protective

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<sup>66</sup> MTC000311, MTC000356, MTC000314, MTC000319, MTC000315, MTC000316, MTC000326, MTC000336.

<sup>67</sup> MTC002539.

<sup>68</sup> *See, e.g.*, MTC000314, MTC000318.

<sup>69</sup> MTC000314.

<sup>70</sup> MTC000314.

<sup>71</sup> Builteman Tr. at 201, 13-25.

Custody, they cannot return to General Population. In my 42 years of correctional experience and 3.5 years of working as a warden approving segregation reviews, I have never witnessed “staying in Protective Custody for too long” as a reason to deny a request to move into General Population. That policy is plainly inconsistent with generally accepted standards for detention facilities, including PBNDS, since it is not based on documented and verified reasons, but on “unverified personal opinion.”<sup>72</sup> To the contrary, PBNDS and generally accepted industry standards require that once a detainee is assigned to Protective Custody, that decision should be revisited on a regular basis.<sup>73</sup> The detention facility is required to make efforts to return the detainee to General Population if at all possible.<sup>74</sup> And if the detainee cannot be safely returned to General Population, the specific reasons for that decision need to be documented.<sup>75</sup> Here, MTC violated all of these standards and accepted industry practices.

**D. MTC Violated PBNDS by Failing to Provide Detainees in Protective Custody with Programs and Services**

74. Considering the well-known harms of solitary confinement, it is imperative that a facility placing Protective Custody detainees in segregation unit endeavor to create the most livable environment possible. As such, the PBNDS requires that “Detainees who have been placed in Administrative Segregation for Protective Custody shall have access to programs, services, visitation, counsel, and other services available to the General Population to the maximum extent possible.”<sup>76</sup>
75. MTC failed to comply with these requirements. For instance, while detainees in the General Population dorms at MTC had all-day access to a large outdoor recreation space in which they could socialize with fellow detainees,<sup>77</sup> detainees in the SMU had extremely limited access to the outdoors and often spent the outdoor time they did have alone and/or in a small “exercise cage.”<sup>78</sup> Additionally, while those in the General

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<sup>72</sup> See PBNDS § 2.2(V)(C)(2).

<sup>73</sup> PBNDS § 2.12(V)(A)(3).

<sup>74</sup> PBNDS § 2.12(V)(A)(3).

<sup>75</sup> PBNDS § 2.12(V)(A)(3).

<sup>76</sup> PBNDS § 2.12(V)(A)(1)(c).

<sup>77</sup> Cortez Tr. at 52:13-54:20.

<sup>78</sup> DSC\_0027.JPG, DSC\_0028.JPG; Rodriguez Tr. at 149:21-149:25; Cortez Tr. at 70:21-71:7.

Population dorms were able to comfortably watch television up to 17 hours per day in the dayroom,<sup>79</sup> individuals in the SMU were only able to see the television during the day if they stood up and peered through the small windows in their cell doors.

76. In January 2021, the California Department of Justice issued a report following its inspection of three detention facilities, including IRDF. The California Department of Justice found that at IRDF, all SMU (previously RHU) detainees were required to remain in their cells for 22-23 hours per day. Only a few were able to go out for an additional hour in the recreation yard. One detainee reported to the California Department of Justice investigation team that he did not go to the small recreation cages because “they just throw you in another cage, isolated.” Other than recreation, court, and medical appointments, detainees at IRDF were not permitted make phone calls, shower, eat, sleep, and use bathroom facilities in their cell.<sup>80</sup>
77. The OIG report also found that IRDF facility staff inaccurately reported to ICE that detainees were receiving recreation time when, in fact, they were not.<sup>81</sup>
78. These concerns identified in the OIG and DOJ’s reports still exist, as Mr. Ruiz admitted that MTC “did not make any changes to their policy” or “did not take any corrective action” in response to these reports.<sup>82</sup>
79. MTC’s failure to provide access to these required services was in violation of PBNDS requirements.

**E. MTC Violated PBNDS by Failing to Provide Sufficient Recreation Time and Failing to Maintain Records of Out-Of-Cell Time**

80. PBNDS requires that all detainees in Administrative Segregation be offered “*at least* one hour of recreation per day, outside their cells and scheduled at a reasonable time, *at least*

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<sup>79</sup> Cortez Tr. at 52:13-53:23.

<sup>80</sup> Cal. Dep’t of Just., *The California Department of Justice’s Review of Immigration Detention in California* (Jan. 2021) at 26.

<sup>81</sup> Off. of Insp. Gen., OIG-21-12, *ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility* (Dec. 18, 2020) at 5.

<sup>82</sup> Ruiz Tr. at 176:7-177:5.

seven days per week.”<sup>83</sup> It also requires that all Administrative Segregation detainees be offered “*at least* two hours of exercise per day, seven days a week, unless documented security, safety or medical considerations dictate otherwise.”<sup>84</sup> The PBNDS further specifies that individuals who are in Administrative Segregation for *Protective Custody* should receive the same amount of out-of-cell time as detainees in the General Population to the “greatest extent possible.”<sup>85</sup>

81. The PBNDS also requires that “detailed records [be] maintained on the circumstances related to a detainee’s confinement to the SMU, through required permanent SMU logs and individual detainee records.”<sup>86</sup> A “permanent SMU log” shall be maintained to record all activities concerning SMU detainees (e.g., meals served, recreational time, visitors, etc.).<sup>87</sup> A weekly “Special Management Housing Unit Record” shall be prepared to document “whether the detainee ate, showered, recreated, and took any medication.”<sup>88</sup>
82. MTC violated the PBNDS by failing to offer Mr. Murillo *any* out-of-cell time on multiple days, including, for example, 12/26/2019 (MTC000724), 2/10/2020 (MTC000717), 3/10/2020 (MTC000713), 3/12/2020 (MTC000713), 3/26/2020 (MTC000711), and 5/22/2020. (MTC004264). MTC also violated the PBNDS by offering Mr. Murillo less than 1 hour of total out-of-cell time on multiple days, including, for example, 2/27/20 (MTC000715), 3/18/20 (MTC000712), 7/20/20 (MTC000699), 7/29/20 (MTC000698), and 8/1/20 (MTC000698).
83. MTC violated the PBNDS by failing to provide individuals in Protective Custody in the SMU with time out of their cells that was anywhere close to that of individuals in General Population. Detainees in the General Population dorms at IRDF were able to freely access an indoor multipurpose room and an outdoor recreation yard along with their fellow detainees for 17 hours and 12 hours per day, respectively.<sup>89</sup>

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<sup>83</sup> PBNDS § 2.12(V)(Z)(2) (emphasis added).

<sup>84</sup> *Id.*

<sup>85</sup> PBNDS § 2.12(V)(A)(1)(9).

<sup>86</sup> PBNDS § 2.12(II)(20).

<sup>87</sup> PBNDS § 2.12(V)(D)(1).

<sup>88</sup> PBNDS § 2.12(V)(D)(3).

<sup>89</sup> Cortez Tr. At 52:13-53:11.

84. MTC also violated the PBNDS by failing to maintain accurate and consistent records of Mr. Murillo's out-of-cell time and repeatedly over-estimating the amount of time that he spent out of his cell in its SMU housing records. MTC maintained the SMU Housing Record (equivalent to the Special Management Housing Unit Record) and the SMU Cell Inspection Sheet (equivalent to the permanent SMU log), but these two records are inconsistent. For instance, on every day from November 19, 2020, to November 23, 2020, the Cell Inspection Sheets report that Mr. Murillo was in his cell at times when the Special Management Housing Unit Record indicates that he was out of his cell.<sup>90</sup>

**F. MTC Violated PBNDS by Allowing Commingling Between Protective Custody Detainees and Detainees on Disciplinary Segregation**

85. PBNDS requires that detainees in Administrative Segregation shall not be commingled with detainees in Disciplinary Segregation.<sup>91</sup> MTC's policy also states that "[d]etainees in Administrative Segregation will not be comingled with detainees in Disciplinary Segregation."<sup>92</sup>
86. MTC violated PBNDS and their own policy by placing Protective Custody detainees in the same housing unit as Disciplinary Segregation detainees. Putting Protective Custody detainees in the same housing unit as detainees in disciplinary status is dangerous and unacceptable because it can create safety issues for Protective Custody detainees.
87. When Protective Custody detainees and Disciplinary Segregation detainees are housed in the same housing unit, Disciplinary Segregation detainees can find out who is in Protective Custody, creating a risk that those individuals will later be identified as Protective Custody detainees if they are released and placed in General Population. This happened at IRDF. Nicholas Rodriguez, former Chief of Security at IRDF, testified that detainees on Disciplinary Segregation were able to see those in Administrative Segregation through cell doors, or when they were going into the yard, to a day room, or to shower, and that such interaction was "unavoidable."<sup>93</sup> Mr. Rodriguez admitted that

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<sup>90</sup> MTC000405-MTC000406, MTC000563-MTC000574.

<sup>91</sup> PBNDS § 2.12(V)(A).

<sup>92</sup> MTC000855.

<sup>93</sup> Rodriguez Tr. at 207, 11-19.



once detainees are in the same housing unit, staff could not prevent detainees from talking to each other.<sup>94</sup> Chief of Security at MTC, Mr. Builteman, likewise testified that detainees could talk to each other.<sup>95</sup> And as Mr. Ruiz admitted in his deposition, a group yard release schedule shows that Disciplinary Segregation detainees and Administrative Segregation detainees were sometimes assigned to the same group to go out to the yard.<sup>96</sup>

88. During my visit to IRDF, I witnessed how the placement of both Protective Custody detainees and disciplinary detainees in Bravo unit would create an unsafe environment for Protective Custody detainees. The Bravo unit is a single-cell unit with 64 beds, half of which are on the first floor and the other half on the second. At IRDF, Disciplinary Segregation detainees are generally placed on the second floor of the unit, and Administrative Segregation detainees, including Protective Custody detainees, are generally placed on the first floor.<sup>97</sup> Those in Disciplinary Segregation can see Protective Custody detainees when they are sitting in the dayroom watching TV, playing board games, or using the phones, or when they walk to the shower. The detainees in Disciplinary Segregation can watch Protective Custody detainees go out to the mini yards and walk out of the main hallway door to the main outside yard, library, and education programs.
89. In certain instances, commingling can increase the safety risk for Protective Custody detainees reintegrating to a General Population unit. As noted above, and as confirmed by Mr. Builteman's testimony, Protective Custody detainees often return to a General Population unit when the reason for Protective Custody placement no longer exists. But some detainees who had moved to General Population had to return to Protective Custody after pressure from General Population detainees who knew them as having been in Protective Custody. Mr. Builteman admitted that this was because Disciplinary Segregation detainees can "recognize" Protective Custody detainees and make them targets.<sup>98</sup>

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<sup>94</sup> *Id.* at 206, 4-9.

<sup>95</sup> *Id.* at 65-66, 18-25, 11-16.

<sup>96</sup> Ruiz Tr. at 156:25-157:14.

<sup>97</sup> Cortez Tr. at 88:2-88:18.

<sup>98</sup> Builteman Tr. at 79:12-83:19.

90. After improperly commingling Protective Custody detainees and detainees on Disciplinary Segregation, MTC then used their own improper practices as a purported basis to refuse to allow Mr. Murillo to return to General Population. This practice violates the PBNDS and generally accepted industry standards. First, if MTC had not improperly commingled detainees, the added risk would not have existed to begin with. Second, there was no evidence that Mr. Murillo would have actually faced any risk if he had been transferred to General Population. Indeed, Mr. Veloz testified that he is not aware of any instances of physical violence at MTC when someone who was in SMU for Protective Custody was later transferred to General Population.<sup>99</sup> Third, the record lacks documentation evidencing that MTC staff made any effort to make an individualized assessment of the risks to Mr. Murillo, assess and/or substantiate whether such risks actually existed, or take any efforts to mitigate whatever risks might have existed so that Mr. Murillo could be transferred to General Population. In fact, Mr. Murillo specifically stated that he did not have any reason to fear placement in General Population in March 2020.<sup>100</sup> MTC's failure to comply with these policies is in direct violation of the PBNDS and generally accepted industry standards.

## **VI. CONCLUSION**

91. MTC violated PBNDS regulations and generally accepted industry standards by assigning Mr. Murillo to Protective Custody without sufficient basis, and then by leaving him there for 14 months and denying Mr. Murillo's repeated requests to transfer to General Population. MTC further violated PBNDS regulations and generally accepted industry standards by improperly using Protective Custody for long term detention, failing to take reasonable steps to identify alternative housing for Protective Custody detainees, failing to provide Protective Custody detainees with programs and services, allowing the commingling of Protective Custody and Disciplinary Segregation detainees, and subjecting Protective Custody detainees to punitive conditions of confinement. MTC also failed to follow established classification guidelines when making decisions concerning the housing placement of detainees. MTC improperly subjected Mr. Murillo

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<sup>99</sup> Veloz Tr. at 195:23-297:17.

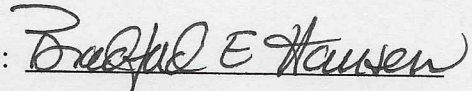
<sup>100</sup> MTC000818.

to a long-term restricted environment without ever looking for less-restrictive alternatives, when detainees requiring Protective Custody are to be housed in the least restrictive environment possible. When Mr. Murillo begged to be removed from segregation and placed in General Population, this request was denied based on vague and unsubstantiated information. As a result, Mr. Murillo was subjected to 14 months of improper segregation and isolation.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: December 19, 2022

By:   
Bradford E. Hansen

# EXHIBIT A

## Materials Considered in Forming Opinions

### Documents

1. 2021-10-14 Plaintiff's Complaint
2. 2022-05-23 Plaintiff's Responses to Defendant's Interrogatories, Set One
3. 2022-05-23 Plaintiff's Responses to Defendant's Interrogatories, Set two
4. Exhibit B – Off. of Insp. Gen., OIG-21-12, *ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility* (Dec. 18, 2020)
5. Exhibit C – Cal. Dep't of Just., *The California Department of Justice's Review of Immigration Detention in California* (Jan. 2021)
6. PBNDS 2011 (Revised December 2016), 2.2, Custody Classification System
7. PBNDS 2011 (Revised December 2016), 2.12 Special Management Units
8. American Correctional Association Performance Based standards for Adult Local Detention Facilities, 4th edition
9. The Impacts of Solitary Confinement," *April 2021 Evidence Brief*, VERA Institute (Apr. 2021), <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>
10. Mary Murphy Corcoran, "Effects of Solitary Confinement on the Well Being of Prison Inmates," *Applied Psychology Opus* (2002), [https://wp.nyu.edu/steinhardt-appsych\\_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/](https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/)
11. Tiana Herring, "The research is clear: Solitary confinement causes long-lasting harm," *Prison Policy Initiative* (Dec. 8, 2020), [www.prisonpolicy.org/blog/2020/12/08/solitary\\_symposium/](http://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/).
12. MTC000001 – MTC000824
13. MTC002705 – MTC002731
14. MTC000818
15. MTC002539
16. MTC009901
17. MTC001649
18. MTC010101
19. MTC010301
20. MTC010501
21. MTC010701
22. MTC010901
23. MTC011101
24. MTC011301
25. MTC011501
26. MTC011701
27. MTC011901
28. MTC012101
29. MTC012301
30. MTC019597
31. MTC019847
32. MTC020097
33. MTC020347

- 34. MTC020597
- 35. MTC020847
- 36. MTC021097
- 37. MTC021347
- 38. MTC021597
- 39. MTC021847
- 40. MTC004275
- 41. MTC006166
- 42. MTC014665
- 43. MTC017621
- 44. MTC019597
- 45. MTC024162
- 46. MTC025440
- 47. MTC027278
- 48. MTC028120 – MTC 28123
- 49. VEGA000001 – VEGA000010

#### **Deposition Transcripts**

Dan Joslin  
Edward Ruiz  
Jose Bulteman  
Nicholas Rodriquez  
Ramon Veloz  
Carlos Murillo  
George Cortez

#### **Photographs from Inspection of the IRDF**

DSC\_0014.JPG, DSC\_0015.JPG  
DSC\_0027.JPG, DSC\_0028.JPG  
DSC\_0076.JPG, DCS\_0078.JPG

# EXHIBIT B



# Bradford E. Hansen

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(402) 476-1517 • bhansen0723@gmail.com

## SUMMARY

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Forty-four years of progressive experience in all aspects of adult corrections coupled with specialization in Investigations, Emergency Preparedness Training Development, Crisis Intervention, Conflict Resolution, and Institutional Security Evaluations.

## PROFESSIONAL EXPERIENCE

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### **Consultant: Hansen Criminal Justice Consulting | 2019 – Present**

- Serve as expert witness and subject matter expert related to in-custody use of force matters, training needs assessments, suicide prevention, crisis intervention and restrictive housing evaluations.
- Act as lead instructor for Crisis Intervention and Conflict Resolution Training Course.

### **Warden | 2016 – 2019**

#### **Tecumseh State Correctional Institution (TSCI)**

- Served as the Chief Executive Officer of the maximum/medium security facility that houses adult male inmates and prepares inmates to transition to lesser custody levels including community custody over time when programming and sentence requirements are met. This facility housed 1,000 maximum and medium inmates which included a 196-bed restrictive housing unit.
- Directed the work of 420 staff in the areas of security, staff training, medical, mental health, unit management, development of procedures and post orders, accreditation, and reception/orientation, inmate classification concerning segregation and protective custody status.
- Planned, organized and coordinated prison operations with other functions within the agency to ensure program objectives and standards are established and attained.
- Conducted critical review of serious incidents, including disturbances, inmate death, and staff assaults against inmates.
- Reviewed use of force reports to ensure compliance with policy.
- Managed \$2.3 million annual budget.
- Other duties included testifying in front of legislative committees as well as answering interrogatories and testifying in court.



**Investigations Supervisor | 2003 – 2016**

Nebraska Department of Correctional Services (NDCS)

- Designed and led the NDCS Investigations Unit. Supervised all NDCS investigations statewide at ten prisons, two community corrections centers, and in the community with nexus to State corrections.
- Supervised criminal and administrative investigations involving staff, parolee, inmate, drug trafficking, assault, sexual assault, PREA, fugitive locate and apprehension operations, terroristic threats, special assignments, outside agency assistance, and internal affairs investigations of prison staff and management.
- Reviewed related policy and made recommendations for staff oversight and accountability.
- Assisted facility administrators and command staff with investigative process and investigative planning on sensitive or complex cases. Served as liaison with external law enforcement and County Attorney Offices throughout Nebraska.

**Agency Training Administrator | 2012 – 2016**

NDCS

- Oversaw and supervised the Department training academy, which included new officer training, in-service training, leadership training for supervisors, leadership training for executive staff and development of new training to assist in the development of all staff.
- Implemented LETRA's Crisis Management training, which included training on communication skills with inmates, how to deescalate crisis events, how to conduct conflict resolution and how to interview inmates to determine if they are suicidal or experiencing a psychotic episode. Staff were taught to document such interactions and make referral to mental health specialists and/or shift supervisors. The course is four days in length and all staff were required to attend the training.
- Implemented policy, procedure, and training for the implementation and use of chemical agents. Certified in Franklin-Covey 7 Habits for Highly Effective People and Leadership: Great Teams, Great Leaders, Great Results.

**Agency Emergency Management Supervisor | 1997 – 2015**

NDCS

- Supervised the Emergency Tactical teams which included the Special Operation Response Team (lethal force team), Correctional Emergency Response Teams (less lethal team which used impact weapons as well as gas delivery systems) and the Crisis Negotiation Team.
- Developed training, techniques, decision making and assault plan development. Selected and approved all members. Certified as an Emergency Preparedness instructor and instructed all department employees in the emergency preparedness plan.
- Conducted critical incident reviews to determine what went well and what could have been done better. The critical incident review included a written report as well as an action plan with identified tasks to be completed.

- Developed and implemented emergency plans for each institution which included a pandemic emergency plan for the swine flu in 2009.
- Developed and implemented Department policy and training concerning the use of Oleoresin Capsicum (OC) as a personal protection for staff and the use of pepper ball delivery system in powder form pelargonic acid vanillyl amide (PAVA) in 2012.

**Officer/Unit Administrator/Administrative Assistant for NDCS | 1977 – 1997**

Lincoln Correctional Center and Nebraska State Penitentiary

- Started as a correctional officer and promoted through the ranks to unit administrator.
- Responsible for managing all inmate housing units, classification, accreditation, litigation reports, member of the executive team that developed standards and operating procedures, conducted inspections to ensure compliance with safety and sanitation standards.

**CONSULTING AND TRAINING EXPERIENCE**

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**Consultant: LETRA | 1997 – present**

LETRA, Inc. of Campbell, California

- Conducted Emergency Preparedness assessments in Washington State and Alabama which included visiting institutions, interviewing staff, evaluating day to day security, reviewing current emergency plans and making recommendations for improvement.
- Initiated and supervised state-wide emergency preparedness training for South Carolina Department of Corrections, Delaware Department of Corrections, New Jersey Department of Corrections, Douglas County Jail, Omaha, Nebraska, and New Mexico Department of Corrections. All states included instructor training and certification.
- Conducted Crisis Intervention – Conflict Resolution instructor training for the California Youth Authority and the Hawaii Department of Corrections.
- Conducted training of new instructors for Crisis-Intervention-Conflict Resolution March 1-13, 2020, Stockton, California for the California Youth Authority.
- Conducted Use of Force training for the Santa Clara County, California jail system.

**National Institute of Corrections (NIC) | 1999 – 2008**

Conducted instructor certification in Crisis Negotiations in South Dakota Department of Corrections, New Mexico Department of Corrections, and Nevada Department of Corrections.

**EDUCATION**

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**Bachelor of Arts (BA) | Graduated 1976**

University of Nebraska at Lincoln

**INSTRUCTOR-LEVEL CERTIFICATIONS**

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- Lean Six Sigma Executive Green Belt | 2018

- Franklin Covey Great Leaders Instructor | 2010
- Franklin Covey Seven Habits Instructor | 2007
- Advanced Emergency Preparedness for Commanders | 2002
- LETRA Master Instructor | 2001
- Crisis Negotiator Basic Class | 1999

#### **AWARDS, PUBLICATIONS, AND ADDRESSES**

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- Keynote Speaker for Correctional Association of Correctional Training Personnel | 2019
- Published "Preparing Leaders for Tomorrow" in Corrections Today | 2012
- Use of Force Discussion with Jail Administrators - University of Omaha-Nebraska Criminal Justice Department - April 2022

#### **PROFESSIONAL ORGANIZATIONS**

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- American Correctional Association
- Correctional Peace Officers Foundation
- Chamber of Commerce

# EXHIBIT C

### **CASES TESTIFIED IN THE LAST 4 YEARS**

1. *Estate of Casey Teskoski v. Wood County* (Wood County Jail) (Case No. 3:19-cv-00095) (suicide). Expert witness for the plaintiff re Prison Policies and Procedures / Suicide. 2019. Deposed in 2020.
2. *Estate of Trequelle Tyreke Vann-Marcouex v. Wood County* (Wood County Jail) (Case No. 3:19-cv-00094). Expert witness for the plaintiff re Prison Policies and Procedures / Suicide. 2019. Deposed in 2020.
3. *Estate of Brandi M. Lundy v. State of Tennessee* (Tennessee Department of Corrections) (Claim No. T20191358). Expert witness for the claimant re Prison Policies and Procedures / Suicide. 2020. Deposed in 2021. Testified in 2022.
4. *Estate of Scott Hultman v. County of Ventura, Ventura County Sheriff's Office, Bill Ayu, et.al.* (C.D. Cal. – Western Division, Case No. 2:21-cv-6280). Expert Witness for the plaintiff re customs, practice, and policies. Deposed in 2022.
5. *Horton v. Parsons, et al.* (Case No. 3:17-cv-01915-WHA). Expert Witness for plaintiff re Use of Force. Deposed in 2022.
6. *Thomsen v. Naphcare, et al.* (Case No. 3:19-cv-00969-AC). Expert Witness for wrongful death. Deposed in 2022.

# EXHIBIT D

Bradford E Hansen  
3640 J Street  
Lincoln, Nebraska 68510

Email: bhansen0723@gmail.com  
Phone: 402-476-1517

***Expert Witness Fee Schedule (6/1/2021)***

1. Conference calls, document review, interviewing staff/inmates, attend meetings, on-site evaluation, writing reports – 225.00 an hour
2. Testimony at deposition or trial: 250.00 per hour (Minimum charge \$1,000 or 4 hours per day)
3. Airfare, car rentals, lodging, incidentals while on travel status: Cost reimbursable
4. Retainer: 2,000
5. Initial case review, typically up to 4 hours: No charge if not retained or if case declined. Charged at case preparation rate if retained and case accepted.

# EXHIBIT E



## 2.2 Custody Classification System

### I. Purpose and Scope

This detention standard protects detainees, staff, contractors, volunteers and the community from harm, and contributes to orderly facility operations, by requiring a formal classification process for managing and separating detainees based on verifiable and documented data.

In accordance with the requirements and guidelines of this detention standard, each facility is required to have in place a formal detainee classification system that starts at admission and is based on verifiable and documented information. Each detainee's custody classification must be determined through application of the ICE custody classification process described herein or a similar locally established system approved by ICE/ERO, to categorize detainees and physically separate them in accordance with those classification levels.

Some factors relevant to custody classification are part of the broader ICE intake risk assessment process that often begins before a detainee's arrival at a detention facility. Classification of ICE detainees also occurs in a variety of contexts and may be performed by a variety of personnel, including ICE or facility staff. The general principles articulated in this standard apply to all facilities that ICE uses. Facilities are also encouraged to utilize the ICE Custody Classification Worksheet, Instructions, Severity of Offense Scale, and Disciplinary Offenses Involving Violence or Behavior Representing a Threat to the Facility attached as Appendices 2.2.A, 2.2.B, 2.2.C, and 2.2.D. Facilities which receive a recommended custody classification or custody classification score generated by an ICE Field Office are encouraged to follow it.

"Classification" and "reclassification" are initial and periodic staff reviews, not only of a detainee's

custody classification, but of that detainee's general case status, disciplinary record, housing, special needs, adjustment to institutional living, opportunities for voluntary work assignments and general well-being.

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

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

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

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

### II. Expected Outcomes

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

1. The community, staff, contractors, volunteers and detainees shall be protected from harm through a formal classification process, for managing and separating detainees by threat risk and special vulnerabilities or special management concerns that is based on verifiable and documented data.
2. Each detainee shall be expeditiously classified upon admission to the facility and before being admitted into general population housing.
3. Detainees shall be protected from harm by assigning detainees housing with persons of similar backgrounds and criminal history.

4. Each detainee's custody classification, housing, and work assignment shall be reviewed at regular intervals, as well as when required by changes in the detainee's behavior or circumstances, and upon discovery of additional, relevant information.
  5. Detainees shall be able to appeal their custody classification level and other assignments.
  6. Detainees with special vulnerabilities will be identified and consideration will be given to providing appropriate accommodation.
  7. Detainees shall be assigned to the least restrictive housing unit consistent with facility safety and security.
  8. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.
- All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.
- Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

#### 2.2 | Custody Classification System

This detention standard replaces "Classification System" dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-2A-30, 2A-31, 2A-32, 2A-33, 2A-34.

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

- "2.11 Sexual Abuse and Assault Prevention and Intervention";
- "2.12 Special Management Units";
- "2.13 Staff-Detainee Communication";
- "5.8 Voluntary Work Program"; and
- "6.2 Grievance System."

*"Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,"* 79 Fed. Reg. 13100 (Mar. 7, 2014).

### V. Expected Practices

#### A. Standards

Each facility shall develop and implement a system for classifying detainees in accordance with this Detention Standard. Facilities may rely on the ICE Custody Classification Worksheet, or a similar locally established system, subject to ICE/ERO evaluation and approval, as long as the classification criteria are objective and uniformly applied, and all procedures meet ICE/ERO requirements.

Each facility administrator shall require that the facility's classification system ensures the following:

1. All detainees shall be classified upon arrival and before being admitted into the general population of the facility. ICE/ERO staff shall provide facilities the data needed from each detainee's file to complete the classification process;

2. All facility staff assigned to classification duties shall be adequately trained in the facility's classification process. Each staff member with detainee in-processing responsibilities shall receive on-site training;
3. Any detainee who cannot be classified because of missing information at the time of processing (e.g., the results of a criminal record check) shall be kept separate from the general population. Once the needed information is obtained, classification shall be expedited, and the detainee may be housed in the general population, if warranted;
4. Each detainee's classification shall be reviewed and approved by a first-line supervisor or classification supervisor; and
5. Detainees shall be assigned to housing, offered recreation and other activities, and assigned to voluntary work, according to their classification levels.

## B. Custody Classification Score

"Classification" is a process of categorizing detainees as low, medium or high custody and housing them accordingly. Research has shown that discretionary decisions about custody classification are more objective and consistent when guided by a process that systematically uses verifiable and documented information, and scores those factors appropriately.

In making classification decisions, facilities use the recommended custody classification generated by the ICE Field Office, or utilize the ICE Custody Classification Worksheet (or similar system) to systematically produce a classification score for each detainee.

## C. Classification Information

During the classification process, staff shall reference facts and other objective, credible evidence documented in the detainee's A-file, work-folders, ICE automated records systems, criminal history

checks, or other objective sources of information. Relevant considerations include any current criminal offense(s), past criminal offense(s), escape(s), institutional disciplinary history, documented violent episode(s) and/or incident(s), medical information or a history of victimization. Personal opinion, including opinions based on profiling, familiarity or personal experience, may not be considered in detainee classification.

Special consideration shall be given to any factor that would raise the risk of vulnerability, victimization or assault. Detainees who may be at risk of victimization or assault include, but are not limited to, persons with disabilities, persons who are transgender, elderly, pregnant, suffering from a serious medical or mental illness, and victims of torture, trafficking, abuse, or other crimes of violence. This process should incorporate the requirements in Standard 2.11 "Sexual Abuse and Assault Prevention and Intervention" regarding assessment of risk for victimization or perpetration of sexual abuse or assault.

Consistent with Standard 4.8 "Disability Identification, Assessment, and Accommodation," the facility shall use any information about identified disabilities in making classification and housing decisions. Detainees with disabilities shall be housed in the least restrictive and most integrated setting possible consistent with facility safety and security, and provided an equal opportunity to participate in or benefit from the facility's programs and activities.

When making classification and housing decisions for a transgender or intersex detainee, staff shall consider the detainee's gender self-identification and an assessment of the effects of placement on the detainee's health and safety. A medical or mental health professional shall be consulted as soon as practicable on this assessment. Placement decisions of transgender or intersex detainees should not be based solely on the identity documents or physical anatomy of the detainee, and a detainee's self-

identification of his/her gender and self-assessment of safety needs shall always be taken into consideration as well. The placement shall be consistent with the safety and security considerations of the facility, and placement and programming assignments for each transgender or intersex detainee shall be reassessed at least twice each year to review any threats to safety experienced by the detainee.

As appropriate, ICE/ERO offices shall provide non-ICE/ERO facilities with the relevant information for the facility to classify ICE/ ERO detainees.

Classification staff shall utilize translation services when necessary.

### 1. Examples of Acceptable Forms and Information

- I-862—Notice to Appear (charging document for aliens in removal proceedings);
- I-221—Order to Show Cause (OSC/WA) and Notice of Hearing, with bond conditions (charging documents for aliens in deportation proceedings);
- I-110 and I-122—Notice to Applicant for Admission, Detained for Hearing before Immigration Judge (charging documents for aliens in exclusion proceedings);
- Form I-203—Order to Detain or Release;
- All conviction documents relating to charges on Form I-221, I-862, and I-110/122 above;
- Criminal History (Rap Sheet)—NCIC/CII/TII, etc.;
- Final order of removal; and
- Any Executive Office for Immigration Review (EOIR) or other official record or observation that is verifiable.

### 2. Examples of Unacceptable Sources of Information that May Not Form the Sole Basis of Classification

- A written or oral account from any interested party, unless and until it has been officially confirmed;
- Unconfirmed and unverified information provided by the detainee; and
- The unverified personal opinion of officers and other personnel.

## D. Intake Processing and Initial Classification

The facility shall segregate the detainee from the general population pending receipt and processing of information needed for classification, as specified above.

The initial classification process and initial housing assignment shall be completed within 12 hours of admission to the facility. If the process takes longer, documentation shall be maintained to explain the cause of the delay and to indicate that the detainee shall be housed appropriately.

After completion of the in-processing health screening form (IHSC-795A or equivalent), the classification officer assigned to intake processing shall review information provided by ICE/ERO and complete a custody classification worksheet or equivalent.

Upon completion of the classification process, at facilities where applicable, staff shall assign individual detainee's color-coded uniforms, wristbands, or other means of custody identification. A system of color-coding permits staff to identify a detainee's classification on sight, thereby eliminating confusion, preventing potentially serious miscommunication, and facilitating consistent treatment of detainees.

## E. Supervisory Review and Custody Classification Assignment

The designated classification supervisor or facility administrator designee shall review the intake

processing officer's classification files for accuracy and completeness and ensure that each detainee is assigned to the appropriate housing unit.

The reviewing supervisor may recommend changes in classification due to:

1. Pertinent incidents of any kind (e.g., disciplinary, medical, victimizations, sexual assaults as either a victim or perpetrator, etc.) while in custody;
2. A classification appeal by a detainee or recognized representative (see below); or
3. Specific, creditable, documented and articulated facts that surface after the detainee's admissions processing.

## F. Classification Levels and Housing Assignments

All facilities shall ensure that detainees are housed according to their classification levels. Participation in work assignments and available activities shall be determined to be consistent with safety and security considerations. Under no circumstances shall issues of facility management, or other factors external to the detainee classification system, influence a detainee's classification level.

SPCs, CDFs and dedicated IGSAs use either the recommended custody classification generated by the ICE Field Office or the point total from the ICE Custody Classification Worksheet to determine the classification level of each detainee.

Non-dedicated IGSAs are encouraged to use the ICE Custody Classification Worksheet, or to adopt the ICE custody classification score generated by an ICE Field Office when one is provided.

Non-dedicated IGSA that do not use the ICE Custody Classification Worksheet or rely on an ICE custody classification recommendation shall follow the guidelines below when classifying detainees.

### 1. Low Custody

Low custody detainees may not be comingled with

high custody detainees.

- May not include any detainee with an arrest or conviction that included an act of physical violence, or any detainee with a history of assaultive behavior.
- May not include any detainee with a felony conviction for an offense that is listed under the "High" or "Highest" section of the severity of offense guideline (Appendix 2.2.C).
- May include detainees with minor criminal histories and non-violent felony charges and convictions.

### 2. Medium Custody

Medium custody detainees may not ordinarily be comingled with high or low custody detainees, except as specified below in the section on "G. Housing Detainees with Different Classification Levels."

- May not include a detainee whose most recent conviction was for any offense listed under the "Highest" section of the severity of offense guideline (Appendix 2.2.C).
- May not include any detainee with a history or pattern of violent assaults.
- May not include a detainee convicted for assault on a correctional officer while in custody or where a previous institutional record suggests a pattern of assaults while in custody.

### 3. High Custody

- High custody detainees may be reclassified to medium only based on institutional behavior provided items under number 2 above do not apply. A detainee must be in custody for a minimum of 60 days before reclassification.
- High custody detainees shall not be assigned work duties outside their assigned living areas.
- High custody detainees:

- are considered high-risk,
- require medium- to maximum-security housing,
- are always monitored and escorted, and
- may not be co-mingled with low custody detainees.

The facility classification system shall assign detainees to the least restrictive housing unit consistent with facility safety and security. Grouping detainees with comparable histories together, and isolating those at each classification level from all others, reduces non-criminal and nonviolent detainees' exposure to physical and psychological danger. The system identifies and isolates the detainees whose histories indicate the characteristics of the "hardened criminal" and who are most likely to intimidate, threaten or prey on the vulnerable.

In facilities that have single cell living arrangements, detainees that pose an immediate and serious threat of violence to staff, other detainees, or themselves shall be housed there.

## G. Housing Detainees with Different Classification Levels

Ordinarily, detainees in different custody classification levels are housed separately. When it becomes necessary to house detainees of different classification levels in the same housing unit, the following guidelines shall apply:

1. High custody detainees may not be housed with low custody detainees.
2. Low custody detainees and medium-low custody detainees may be housed together, and medium-high custody detainees and high custody detainees may be housed together:
3. Medium-low custody detainees are those with no history of violent or assaultive charges or convictions, no institutional misconduct, and no gang affiliation.

4. Medium-high and high custody detainees are those with a history of violent or assaultive charges, convictions, institutional misconduct, or those with a gang affiliation
5. Under no circumstance may a medium custody detainee with a history of assaultive or combative behavior be placed in a low custody housing unit.

ICE may provide to facilities specific recommendations or scores based on the ICE custody classification system to further guide facility housing assignments.

## H. Reclassification

All facility classification systems shall ensure that a detainee is reassessed and/or reclassified.

Reclassification assessments shall take into account, among other factors, the detainee's risk of victimization or abusiveness.

Staff shall record whether a classification process is being conducted for an initial classification or subsequent reclassification:

1. The first reclassification assessment shall be completed 60 to 90 days after the date of the initial classification.
2. Subsequent reclassification assessments shall be completed at 90- to 120-day intervals.
3. Special Reclassification Assessments  
Staff shall complete a special reclassification within 24 hours before a detainee leaves the Special Management Unit (SMU), following an incident of abuse or victimization, and at any other time when warranted based upon the receipt of additional, relevant information, such as after a criminal act, or if a detainee wins a criminal appeal, is pardoned or new criminal information comes to light.

If it is documented, suspected or reported that a detainee has been physically or sexually abused or assaulted, the victim's perception of his or her own safety and well-being shall be among the



factors considered.

A detainee may request reclassification in writing by submitting a detainee request form, as described in standard “2.13 Staff-Detainee Communication.” The classification officer shall ordinarily respond in person or in writing as soon as possible and practicable, but no later than within 72 hours of receipt. Any reclassification, however, requires prior supervisory approval on the custody classification form.

#### 4. Permissible Changes

- A detainee may be reclassified at any time to correct classification errors or when new information becomes available.
- A detainee may be reclassified to high custody based on documented behavior, including threats to the facility, other detainees or personnel. Any reclassification to high custody that is not validated by the total custody classification score on the custody classification form must be approved by the classification officer within 72 hours of any event requiring reclassification.
- A medium custody detainee may be reclassified to low custody based on institutional behavior, provided the detainee has been in custody for at least 60 days.

- A detainee may be reclassified any time there are medically documented changes in his/her medical or mental health condition.

### I. Classification Appeal

Classification decisions should be provided to the detainee along with information on the appeal process in a language and manner understood by the detainee.

Classification systems shall include procedures for detainees to appeal their classification levels through written detainee request forms or by filing formal grievances as described in standard “6.2 Grievance System.”

### J. Documentation

Classification forms and supporting documentation shall be placed in the detention file.

### K. Notice to Detainees

The *ICE Detainee Handbook* standard section on classification shall include:

- An explanation of the classification levels, with the conditions and restrictions applicable to each.
- The procedures by which a detainee may appeal his or her classification.

## Appendix 2.2.A: ICE Custody Classification Worksheet

### ICE Custody Classification Worksheet

<b>Part 1. Basic Information</b>		Initial	Reclassification	Special Classification
Field/Sub Office:		Facility:	Date:	
Officer Name:		Language(s) Used during the Interview:		

Alien Number:		DOB:		Gender:	<input type="checkbox"/> F <input type="checkbox"/> M
Last Name:			First Name:		

Part 2. Special Vulnerabilities and Management Concerns	
	<p>Does a Special Vulnerability exist? Inquire, observe, and review all documentation. If based on your assessment the vulnerability exists, select the appropriate boxes below. Also indicate whether there are other management concerns that may affect the custody decision.</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
	<p> <input type="checkbox"/> serious physical illness  <input type="checkbox"/> serious mental illness  <input type="checkbox"/> disability  <input type="checkbox"/> elderly  <input type="checkbox"/> pregnancy  <input type="checkbox"/> nursing  <input type="checkbox"/> sole caretaking responsibility  <input type="checkbox"/> risk based on sexual orientation/gender identity  <input type="checkbox"/> victim of persecution/torture  <input type="checkbox"/> victim of sexual abuse or violent crime  <input type="checkbox"/> victim of human trafficking  <input type="checkbox"/> other (specify):         </p>
	Provide further explanation as necessary:
	<i>If any boxes are checked, consult with the local ICE Field Office regarding appropriate placement and other management considerations, and record the date and time of consultation here:</i>



**Part 3. Custody Classification Worksheet**

<b>1</b>	Severity of Charge/ Conviction Associated with the ICE Encounter (Use Appendix 2.2.C Severity of Offense Scale)							
	None		<b>0</b>	Enter the score here: _____				
	Low		<b>2</b>					
	Moderate		<b>4</b>					
	High		<b>6</b>					
	Highest		<b>7</b>					
<b>2</b>	Single Most Serious Conviction in the Individual's Criminal History (Excluding Item 1)							
	See Appendix 2.2.C		None	>15 Years	10-15 Years	5-10 Years	< 5 Years	Enter the score here: _____
		Highest	<b>0</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>7</b>	
		High	<b>0</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>6</b>	
		Moderate	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	
		Low	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>2</b>	
<b>3</b>	Additional Prior Convictions (Excluding Items 1 and 2)							
	None		<b>0</b>	Enter the score here: _____				
	1-2 misdemeanors, no felonies		<b>1</b>					
	3-4 misdemeanors, or 1 felony		<b>2</b>					
	5 or more misdemeanors, or 2 felonies		<b>4</b>					
<b>4</b>	Supervision History							
	None		<b>0</b>	Enter the score here: _____				
	Walk-away or attempted escape from an unsecured facility, absconding, bond breach, violations of prior voluntary departure orders or conditions of supervision, or prior revocation of supervision		<b>3</b>					
	Escape or attempted escape from a secure facility		<b>7</b>					
<b>5</b>	Security Threat Group (STG)							
	The individual has no known membership or affiliation with an STG		<b>0</b>	Enter the score here: _____				
	The individual is a member of an STG		<b>5</b>					
<b>6</b>	History/Pattern of Violence (Two or more arrests)							
	15 or more years ago		<b>1</b>	Enter the score here: _____				
	Over 10 years and less than 15 years ago		<b>2</b>					
	Over 5 years and less than 10 years ago		<b>3</b>					
	Within the last 5 years		<b>5</b>					
<b>7</b>	Number of Sustained Disciplinary Infractions Involving Violence or Behavior Representing a Threat to the Facility (Institution(s)):							
	None		<b>0</b>	Enter the score here: _____				
	One		<b>2</b>					
	Two		<b>4</b>					
	Three or more		<b>6</b>					
	Check if data not available:		<input type="checkbox"/>					
<b>Total Custody Classification Score</b> _____								

Custody Level Guideline Ranges					
If there is no arrest or conviction for a violent offense, use this table.				If the person has an arrest or conviction for a violent offense, use this table.	
Low Custody	0-2				
Medium-Low Custody	3-5				
Medium-High Custody	6-11				
High Custody	12+			0-6	7+
If the Officer makes a custody recommendation outside of the custody level guideline ranges above, provide the rationale and include aggravating/ mitigating circumstances that were considered in the decision:					
Recommendation Outside the Guideline Ranges		Low	Medium-Low	Medium-High	High
Officer Signature				Date	
<p>In the section below, check the custody level of the individual's housing assignment, following the guidance provided in the instructions, F. Housing Assignment.</p> <p>For purposes of housing medium-custody individuals with low-or high level custody individuals, use the following guidelines:</p> <p>Medium-Low may be housed with low custody individuals;</p> <p>Medium-High may be housed with high-custody individuals; but,</p> <p>Low custody individuals may never be housed with high-custody individuals, or medium custody individuals who have any history of assaultive or combative behavior.</p> <p>If the individual is to be placed in administrative segregation, a copy of the administrative segregation order shall be immediately provided to the Field Office Director or his designee, as required by Standard 2.12 "Special Management Units."</p>					
Final Housing Assignment Custody Level		Low	Medium-Low	Medium-High	High Administrative
If the Supervisor decides to override the Officer's custody level recommendation, provide the rationale below:					
Supervisor Signature				Date	

## Appendix 2.2.B: Instructions for Completing the ICE Custody Classification Worksheet

### 1. Introduction

Each facility is required to have a formal detainee classification system that starts at admission and is based on verifiable and documented information.

“Classification” and “reclassification” are initial and periodic staff reviews, not only of a detainee’s custody classification, but of that detainee’s general case status, disciplinary record, housing, special needs, adjustment to institutional living, opportunities for voluntary work assignments, and general well-being.

Custody classification is a process of categorizing detainees as low, medium or high custody and housing them accordingly. The ICE Custody Classification Worksheet, attached as Appendix 2.2.A, is designed to systematically document and score information about each detainee in order to produce a total custody classification score that may be used, in conjunction with professional experience and judgment, to guide classification decisions.

The factors considered for custody classification closely align with the “public safety factors” that are part of the broader ICE intake risk assessment and classification process that often begins even before a detainee’s arrival at a detention facility.

While the protection of detainees, staff, contractors, volunteers and the community from harm is an important consideration in determining a detainee’s custody classification, a decision about where and how to house a detainee is also based on the detainee’s physical and mental health and other important factors relating to a detainee’s special needs, which are referred to as “special vulnerabilities” or “management concerns.”

### 2. Specific Instructions for Completing the

## ICE Custody Classification Worksheet

### A. Basic Information – Part 1

Check the appropriate box to indicate whether the form is being completed for:

- Initial classification
- Reclassification. (The first reclassification assessment should be completed 60 to 90 days after the initial classification. Subsequent reclassification assessments should be completed at 90 to 120-day intervals.)
- Special reclassification (see standard “2.2 Custody Classification System”).

Enter the Field/Sub Office, facility and date.

Enter the name of the classification officer and the language(s) used during the interview.

Enter the detainee’s alien number, last name, first name, date of birth, and gender.

### B. Special Vulnerabilities and Management Concerns – Part 2

Special vulnerabilities and management concerns should be taken into account in assigning levels of detention custody.

The classification officer should inquire about and remain alert to signs of any special vulnerability or management concern that may affect the custody determination. Special vulnerabilities may include disability, serious medical or mental health needs, risk based on sexual orientation or gender identity, advanced age, pregnancy, nursing, sole caretaking responsibilities, or victimization, including individuals who may be eligible for relief related to the Violence Against Women Act (VAWA), victims of crime (U visa), or victims of human trafficking (T visa). (To detain individuals confirmed to have vulnerabilities, ICE Officers must prior to the individual’s arrival at the facility have obtained concurrence from the Field Office Director (FOD)

and sent a significant event notice (SEN) to Headquarters.)

Use the boxes provided to check any vulnerability that applies, and provide an explanation if necessary. If any boxes are checked, consult with the local ICE Field Office regarding appropriate placement and other management considerations.

### C. Custody Classification Scoring – Part 3

Item 1—Severity of Charge/Conviction Associated with the ICE Encounter.

Determine the charge or conviction, if any, that is associated with the individual's current ICE encounter, and locate it or a similar offense in "Appendix 2.2.C: Severity of Offense Scale" to determine if it is in the "Low," "Moderate," "High," or "Highest" category. If more than one charge or conviction is involved, choose only the most serious charge/conviction that led to the encounter by consulting the Severity of Offense Scale.

Identify the score associated with the severity category into which the individual's most serious offense falls.

Enter the score in the field provided.

If the individual was last booked and returned to custody for a parole or probation violation, the severity of the current charge/conviction should be based on the offense(s) for which parole or probation was granted.

Item 2—Single Most Serious Conviction in the Individual's Criminal History.

Excluding the entry in Item 1, determine the individual's most serious prior conviction under "Appendix 2.2.C: Severity of Offense Scale" to determine if it or a similar offense is in the "Low," "Moderate," "High," or "Highest" category.

Separate convictions for multiple crimes should be considered independently of each other, regardless of whether they occurred on the same date.

Based on how long ago this conviction occurred, use the table located on the ICE Custody Classification Worksheet to assign a score. For example, if an individual was convicted of burglary with an assault, this would be a "Highest" offense and the row labeled "Highest" on the ICE Custody Classification Worksheet would be used. If the individual was convicted of this offense less than 5 years from the date this form is being completed, then the individual would receive a score of 7.

If the individual's most serious conviction is trespass, this would be a "Low" offense according to "Appendix 2.2.C" and the row labeled "Low" on the ICE Custody Classification Worksheet would be used. If the individual was convicted of this offense within 10-15 years of the date this form is being filled out, then the individual would receive a score of 0.

If the individual has no record of prior convictions, enter 0.

Enter the score in the field provided.

Item 3—Additional Prior Convictions Excluding Items 1 and 2.

Use the ICE Custody Classification Worksheet to score all other misdemeanor and felony convictions that have not been scored in Items 1 and 2 (including all separate convictions obtained for multiple crimes, regardless of whether they occurred on the same date).

Select the highest score applicable to the individual's history of additional prior convictions. For instance, if the individual has been convicted of 2 misdemeanors and 1 felony, a score of 2 (and not 1) should be assigned.

Item 4—Supervision History.

Escapes from correctional settings or programs should be counted if the individual was found guilty of the escape or escape attempt by an institutional disciplinary committee, regardless of court prosecution or conviction status. Do not consider any escapes or attempts scored in Item 1.

With regard to “violations of prior voluntary departure orders,” an individual should be scored 3 points only if he/she has *repeated* failures to appear for his/her immigration hearings. Do not include a single failure to appear for an immigration hearing.

Enter the score corresponding to the individual’s most serious escape attempt in the field provided.

Item 5—Security Threat Group.

### **Security Threat Group (STG)**

A Security Threat Group (STG) member is any individual, who through association, ideology, self-identification, identifying symbol(s), or activities and/or conduct (both inside and outside custodial environments), is known to pose a threat to the safety of the community, the security of ICE staff, ICE facilities, and/or those in ICE custody.

### **Security Threat Group (STG) Examples**

- Traditional Prison Gangs
- Traditional Street Gangs
- Non-Traditional Gangs
- Transnational Criminal Organizations
- Foreign and Domestic Terrorist Organizations
- Special Groups

**Enter 0** if there is no known affiliation or membership.

**Enter 5** if there is documentation or a self-admission that the individual is a member of an STG.

### **Item 6 – History/Pattern of Violence**

If the individual has two or more prior arrests for violence against the person, use Item 6 to score those arrests. The less recent the occurrence of the arrests, the lower the score. Use the most recent arrest to calibrate the time period. If the more recent of the two arrests for a violent offense occurred within the last 5 years, score this item as a 5. If the more recent of the two arrests occurred over 5 years ago, and less

than 10 years ago, score the item as a 3. If the more recent of the two arrests occurred more than 10 years ago, and less than 15 years ago, score this item as a 2. If the arrest occurred more than 15 years ago, score this item as a 0.

### **Item 7—Number of Sustained Institutional Disciplinary Infractions**

Sustained disciplinary infractions should be counted if they involved violence or behavior representing a threat to the facility. Using records from a current period of ICE detention and/or prior periods of detention or imprisonment, calculate and enter the appropriate number of points. As a general matter disciplinary offenses that involve violence or behavior representing a threat to the facility are those listed in the “Greatest” and “High” offense categories in standard “3.1 Disciplinary System”, Appendix 3.1.A. These offenses are also listed in Appendix 2.2.D. If no information is available, check the box and score Item 7 as 0.

### **D. Total Custody Classification Score**

Add the points in Items 1 through 7 to calculate the detainee’s total custody classification score.

### **E. Classification Officer’s Recommended Custody Level**

In the area designated “Custody Level Guideline Ranges,” check the box that corresponds to the value entered for the total custody classification score. If the detainee has no violent conviction, use the following scoring ranges. If the total score is 0-2, check the Low Custody box. If the total score is 3-5, check the Medium-Low Custody box. If the total score is 6-11, check the Medium-High Custody box. If the total score is 12 or more, check the High Custody Box. If the detainee has a violent conviction, use the following scoring ranges. If the detainee’s total score is 0-6, check the Medium-High Custody box. If the total score is 7 or more, check the High Custody box.

If a decision is made to recommend a custody level

that falls outside of the ranges prescribed by the worksheet, note in the space provided the aggravating/mitigating or other circumstances that justify that decision. The space should also be used for any other matters the classification officer would like to document or call to the attention of the supervisor with regard to the detainee's custody classification and housing.

In the area designated "Recommendation Outside the Guideline Ranges," check the custody level that corresponds to the custody level recommendation made that differs from that prescribed by the Custody Level Guideline Ranges.

#### **F. Housing Assignment**

In the area designated "Final Housing Assignment Custody Level," check the level of custody of the individual's housing assignment.

If the detainee is to be placed in administrative segregation, a copy of the administrative segregation order shall be immediately provided to the Field Office Director or his designee, as required by

#### **Standard 2.12 "Special Management Units."**

For purposes of housing medium-custody individuals with low or high level custody individuals, use the following guidelines:

Medium-Low may be housed with low custody individuals;

Medium-High may be housed with high-custody individuals; but,

Low custody individuals may never be housed with high-custody individuals, or medium custody individuals who have any history of assaultive or combative behavior.

ICE may periodically provide additional recommendations and guidance.

#### **G. Supervisory Approval**

In the area designated "Supervisor Signature," the supervisor should sign and date the ICE Custody Classification worksheet indicating his/her approval of the decisions recorded in this worksheet.

## Appendix 2.2.C: Severity of Offense Scale

### I. HIGHEST

Aiding Escape  
 Aggravated  
 Battery with Deadly Weapon  
 Armed Robbery (Multiple with injury)  
 Burglary with Assault  
 Escape (Secure Facility)  
 Inciting Riot  
 Kidnapping  
 Murder (1st, 2nd degree)  
 Sexual Battery (with violence upon a minor)

### II. HIGH

Aggravated Assault  
 Aggravated Battery  
 Aggravated Child Abuse  
 Arson  
 Battery Law Enforcement Officer  
 Burglary (Armed)  
 Extortion  
 False Imprisonment  
 False Report of Bombings  
 Controlled Substances (Importation, Trafficking)  
 Introduction of Contraband into Detention Facility  
 Manufacture of Explosives  
 Robbery (armed, strong armed)  
 Sexual Battery (other than capital or life felony)

### III. MODERATE

Armed Trespass  
 Burglary  
 Carrying Concealed Firearm  
 Forgery  
 Grand Theft  
 Manslaughter  
 Sale, Delivery, Possession of Controlled Substance  
 Tampering with Witness  
 Worthless Checks (felony)  
 Welfare Fraud (felony)  
 Escape (Non-secure Facility)

### IV. LOW

Driving under the Influence  
 Leaving the scene of Accident  
 Battery (Simple Assault)  
 Carrying Concealed Weapon (other than firearm)  
 Disorderly Conduct  
 Gambling  
 Offering to Commit Prostitution  
 Possession Marijuana (misdemeanor)  
 Possession Drug Paraphernalia  
 Petit Theft  
 Trespass  
 Worthless Check (misdemeanor)



## Appendix 2.2.D: Disciplinary Offenses Involving Violence or Behavior Representing a Threat to the Facility

### I. “Greatest” Offense Category

- 100 Killing
- 101 Assaulting any person (includes sexual assault)
- 102 Escape from escort; escape from a secure facility
- 103 Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of greatest severity [e.g., a riot or an escape]; otherwise the charge is classified as Code 218 or 321)
- 104 Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, escape tool, device or ammunition
- 105 Rioting
- 106 Inciting others to riot
- 107 Hostage-taking
- 108 Assaulting a staff member or any law enforcement officer
- 109 Threatening a staff member or any law enforcement office with bodily harm
- \*198 Interfering with a staff member in the performance of duties (conduct must be of the greatest severity; this charge is to be used only if another charge of greatest severity is not applicable)
- \*199 Conduct that disrupts or interferes with the security or orderly running of the facility (conduct must be of the greatest severity;

this charge is to be used only if another charge of greatest severity is not applicable)

### II. “High” Offense Category

- 200 Escape from unescorted activities open or secure facility, proceeding without violence
- 201 Fighting, boxing, wrestling, sparring and any other form of physical encounter, including horseplay, that causes or could cause injury to another person, except when part of an approved recreational or athletic activity
- 202 Possession or introduction of an unauthorized tool
- 203 Loss, misplacement or damage of any restricted tool
- 204 Threatening another with bodily harm
- 205 Extortion, blackmail, protection and demanding or receiving money or anything of value in return for protection against others, avoiding bodily harm or avoiding a threat of being informed against
- 206 Engaging in sexual acts
- 207 Making sexual proposals or threats
- 208 Wearing a disguise or mask
- 209 Tampering with or blocking any lock device
- 210 Adulterating of food or drink
- 211 Possessing, introducing, or using narcotics, narcotic paraphernalia or drugs not prescribed for the individual by the medical staff
- 212 Possessing an officer’s or staff member’s clothing
- 213 Engaging in or inciting a group demonstration
- 214 Encouraging others to participate in a work stoppage or to refuse to work



- |   |   |
|---|---|
| <p>215 Refusing to provide a urine sample or otherwise cooperate in a drug test</p> <p>216 Introducing alcohol into the facility</p> <p>217 Giving or offering an official or staff member a bribe or anything of value</p> <p>218 Giving money to, or receiving money from, any person for an illegal or prohibited purpose (e.g., introducing/conveying contraband)</p> <p>219 Destroying, altering, or damaging property (government or another person's) worth more than \$100</p> <p>220 Being found guilty of any combination of three or more high moderate or low</p> | <p>moderate offenses within 90 days</p> <p>222 Possessing or introducing an incendiary device (e.g., matches, lighter, etc.)</p> <p>223 Engaging in any act that could endanger person(s) and/or property</p> <p>*298 Interfering with a staff member in the performance of duties (conduct must be of highest severity; this charge is to be used only when no other charge of highest severity is applicable)</p> <p>*299 Conduct that disrupts or interferes with the security or orderly operation of the facility (conduct must be of highest severity; this charge is to be used only when no other charge of highest severity is applicable)</p> |
|---|---|

## 2.12 Special Management Units

### I. Purpose and Scope

This detention standard protects detainees, staff, contractors, volunteers and the community from harm by segregating certain detainees from the general population in Special Management Units with an Administrative Segregation section for detainees segregated for administrative reasons and a Disciplinary Segregation section for detainees segregated for disciplinary reasons.

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

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

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

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

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

### II. Expected Outcomes

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

1. The facility shall have a Special Management Unit (SMU) with provisions for separating the

administrative segregation section, for detainees segregated from the general population for administrative reasons, from the disciplinary segregation section, for detainees segregated from the general population for disciplinary reasons.

2. Detainees housed in the general population, staff, contractors, volunteers and the local community shall be protected from harm by the segregation of certain detainees in an SMU.
3. Any detainee who represents an immediate, significant threat to safety, security or good order shall be immediately controlled by staff and, if cause exists and supervisory approval granted, placed in administrative segregation. ICE and the detainee shall be immediately provided a copy of the administrative segregation order describing the reasons for the detainee’s placement in the SMU.
4. Administrative segregation may also be available to detainees for the purpose of providing “protective custody.” A detainee shall be placed in “protective custody” status in administrative segregation only when there is documentation and supervisory approval that it is necessary to protect a detainee from harm and that no reasonable alternatives are available.
5. A detainee shall be placed in disciplinary segregation only after a finding by a disciplinary hearing panel that the detainee is guilty of a prohibited act or rule violation classified at a “greatest,” “high” or “high-moderate” level, as defined in “Appendix 3.1.A: Offense Categories,” found in “3.1 Disciplinary System.”
6. Disciplinary segregation shall only be ordered when alternative dispositions may inadequately regulate the detainee’s behavior.
7. Health care personnel shall be immediately informed when a detainee is admitted to an SMU and shall conduct an assessment and review of the detainees medical and mental health status and care needs. Health care personnel shall at a minimum conduct a daily assessment of detainees

- in an SMU. Where reason for concern exists, a qualified medical, or mental health professional shall conduct a complete evaluation.
8. Detainees with serious mental illness may not be automatically placed in an SMU on the basis of such mental illness. Every effort shall be made to place detainees with serious mental illness in a setting in or outside of the facility in which appropriate treatment can be provided, rather than an SMU, if separation from the general population is necessary.
  9. The status of detainees in SMUs shall be reviewed by supervisory staff in accordance with required time schedules, and the results of those reviews shall be documented.
  10. A detainee shall remain in disciplinary segregation for no more than 30 days per incident, except in extraordinary circumstances, such as incidents involving violations of offenses 100 through 109 listed in the "Greatest" offense category in Appendix 3.1.A, and his/her status shall be reviewed by the facility administrator after the first 30 days and each 30 days thereafter, to determine whether continued detention in disciplinary segregation is warranted.
  11. Detainees in SMU shall be afforded basic living conditions that approximate those provided to the general population, consistent with the safety and security considerations that are inherent in more controlled housing, and in consideration of the purpose for which each detainee is segregated.
  12. In general, when a detainee in an SMU is deprived of any usually authorized items or activity, a report of the action shall be forwarded to the facility administrator for notice and review.
  13. Detainees in SMU shall have regular access to supervisory, management, program and health care staff.
  14. Each detainee in an SMU shall be offered individual recreation or appropriate group recreation time, unless documented security, safety, or medical considerations dictate otherwise.
  15. Detainees in SMU shall be able to write, send and receive mail and correspondence as they would otherwise be able to do while detained within the general population.
  16. Detainees in SMU shall be provided opportunities for general visitation, including legal visitation, unless there are substantial, documented reasons for withholding those privileges.
  17. Detainees in SMU shall have access to personal legal materials, law library materials and legal visits, in accordance with provisions in the PBNDS.
  18. Detainees in SMU shall have access to telephones, in accordance with provisions in the PBNDS.
  19. Detainees in SMU shall have access to programs and services such as commissary, library, religious guidance and recreation, in accordance with provisions in the PBNDS.
  20. Detailed records shall be maintained on the circumstances related to a detainee's confinement to the SMU, through required permanent SMU logs and individual detainee records.
  21. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance,

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

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

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

### III. Standards Affected

This detention standard replaces “Special Management Unit (Administrative Segregation)” and “Special Management Unit (Disciplinary Segregation),” both dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-2A-44 through 2A-66.

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

- “2.4 Facility Security and Control”;
- “2.6 Hold Rooms in Detention Facilities”;
- “2.10 Searches of Detainees”;
- “2.13 Staff-Detainee Communication”;
- “3.1 Disciplinary System”;
- “4.5 Personal Hygiene”;
- “4.6 Significant Self-harm and Suicide Prevention and Intervention”;
- “5.1 Correspondence and Other Mail”;
- “5.4 Recreation”;

- “5.6 Telephone Access”;
- “5.7 Visitation”; and
- “6.3 Law Libraries and Legal Material.”

“*Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*,” 79 Fed. Reg. 13100 (Mar. 7, 2014).

## V. Expected Practices

### A. Placement in Administrative Segregation

Administrative Segregation status is a nonpunitive status in which restricted conditions of confinement are required only to ensure the safety of detainees or others, the protection of property, or the security or good order of the facility. For matters of safety and security, staff may have to take immediate action to control a detainee, including placement in administrative segregation.

Detainees in administrative segregation shall not be commingled with detainees in disciplinary segregation.

Each facility shall develop and follow written procedures, consistent with this standard, governing the management of its administrative segregation unit. These procedures should be developed in consultation with the Field Office Director having jurisdiction for the facility. These procedures must document detailed reasons for placement of an individual in administrative segregation. Detainees and the Field Office Director (or his designee) must be provided a copy of the administrative segregation order.

Prior to the detainee’s placement in administrative segregation, the facility administrator or designee shall review the case to determine whether administrative segregation is in fact warranted. The facility administrator may delegate to a supervisor the authority to place a detainee in administrative segregation.

## 1. Reasons for Placement in Administrative Segregation

A detainee may be placed in administrative segregation when the detainee's continued presence in the general population poses a threat to life, property, self, staff, or other detainees; for the secure and orderly operation of the facility; for medical reasons; or under other circumstances as set forth below. Some examples of incidents warranting a detainee's assignment to administrative segregation include, but are not limited to, the following.

- a. A detainee is awaiting an investigation or a hearing for a violation of facility rules. Pre-disciplinary hearing detention shall be ordered only as necessary to protect the security and orderly operation of the facility.
  - 1) Pre-disciplinary hearing detention is not to be used as a punitive measure.
  - 2) A detainee who demonstrates good behavior during pre-disciplinary hearing detention should be considered for release to the general population while awaiting his or her disciplinary hearing.
  - 3) Time served in pre-disciplinary hearing detention shall be deducted from any time ordered by the Institution Disciplinary Panel (IDP).
  - 4) Absent compelling circumstances, such as a pending criminal investigation, a detainee should not remain in pre-disciplinary hearing detention for a longer period of time than the maximum term of disciplinary segregation permitted for the most serious offense charged.
- b. A detainee is a threat to the security of the facility. The facility administrator may determine that a detainee's criminal record, past behavior at other institutions, behavior while in ICE/ERO detention, or other evidence is sufficient to warrant placement of the detainee in

administrative segregation.

- 1) As a general matter, a detainee should not be placed directly in administrative segregation as a security threat on the basis of the detainee's misconduct at that detention facility, in the absence of any disciplinary proceedings. Instead, the facility should address the misconduct through the facility's disciplinary processes, and may place the detainee in pre-disciplinary hearing detention pending the outcome of the disciplinary proceedings.
- 2) Continued placement in segregation based on prior behavior should be reviewed at the required intervals, taking into account the detainee's behavior while in segregation. The facility shall continue to consider, in coordination with the Field Office Director where necessary, whether there are more appropriate alternatives to segregation, such as medium- to maximum-security general population housing units either within the facility or elsewhere.
- 3) Copies of records supporting this action shall be attached to the administrative segregation order.
- c. A detainee requires protection. Protective custody may be initiated at the detainee's request or by staff as needed to protect the detainee from harm. Each facility shall develop procedures to consider continued placement in protective custody as well as provisions for release from protective custody when appropriate. Frequently, the types of detainees who require this type of treatment include, but are not limited to:
  - 1) victims of detainee assaults;
  - 2) detainee informants or witnesses (e.g., detainees who provide information to institutional staff or any law enforcement agency concerning improper or criminal activities by others);

- 3) sexual predators or other detainees charged with a heinous or notorious crime;
- 4) detainees who have been pressured by other detainees to participate in sexual activity;
- 5) detainees who refuse to enter the general population because of alleged intimidation from other detainees;
- 6) detainees who refuse to return to the general population, but who do not provide the reason for refusal;
- 7) detainees who appear to be in danger of bodily harm;
- 8) detainees who seek protection, claiming to be former law enforcement officers or to have held sensitive law enforcement positions, whether or not there is official information to verify the claim; or
- 9) detainees who request protective custody.

A detainee's age, disability, sex, sexual orientation, gender identity, race, color, national origin, 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.

Use of administrative segregation to protect detainees with special vulnerabilities, including detainees vulnerable to sexual abuse or assault, shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, and as a last resort.

Detainees who have been placed in administrative segregation for protective custody shall have access to programs, services, visitation, counsel and other services available to the general population to the

maximum extent possible.

- d. A detainee is scheduled for release, removal, or transfer within 24 hours. Such segregation may be ordered for security reasons or for the orderly operation of the facility.
- e. The IDP may recommend a detainee be placed in administrative segregation following disciplinary segregation if it determines that releasing the detainee into the general population would pose a threat to the detainee or security and orderly operation of the facility. However, a subsequent placement in administrative segregation requires an administrative segregation order justifying the placement after the completion of the term served in disciplinary segregation, with the detainee's behavior while in disciplinary segregation being taken into account.
- f. A detainee transferred from disciplinary segregation to administrative segregation shall enjoy the same privileges as all other detainees in administrative segregation, provided receipt of such privileges poses no threat to the safety, security, or orderly operation of the facility.
- g. A medical professional who ordered a detainee removed from the general population shall complete and sign an administrative segregation order (see below), unless the detainee is to stay in the medical department's isolation ward.

## 2. Administrative Segregation Order

A written order shall be completed and approved by the facility administrator or designee before a detainee is placed in administrative segregation, except when exigent circumstances make such documentation impracticable. In such cases, an order shall be prepared as soon as possible.

- a. Prior to a detainee's actual placement in administrative segregation, the facility administrator or designee shall complete the administrative segregation order (Form I-885 or equivalent), detailing the reasons for placing a



detainee in administrative segregation.

- b. In an emergency, the detainee's placement in administrative segregation may precede the paperwork, which the facility administrator or designee shall prepare as soon as possible after the detainee's placement.
- c. All memoranda, medical reports and other relevant documents shall be attached to the administrative segregation order.
- d. If the segregation is ordered for protective custody purposes, the order shall state whether the detainee requested the segregation, and whether the detainee requests a hearing concerning the segregation.
- e. The administrative segregation order shall be immediately provided to the detainee in a language or manner the detainee can understand, unless delivery would jeopardize the safe, secure, or orderly operation of the facility.

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

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

- f. A copy of the administrative segregation order shall also be immediately provided to the Field Office Director or his designee.
- g. The order shall remain on file with the SMU until the detainee is returned to the general population.
- h. When the detainee is released from the SMU, the releasing officer shall indicate the date and time of release on the administrative segregation order. The completed order shall then be forwarded to the Chief of Security for inclusion in the detainee's detention file.

### 3. Review of Detainee Status in Administrative Segregation

All facilities shall implement written procedures for the regular review of all detainees held in administrative segregation, consistent with the procedures specified below.

- a. A supervisor shall conduct a review within 72 hours of the detainee's placement in administrative segregation to determine whether segregation is still warranted.
  - 1) The review shall include an interview with the detainee.
  - 2) A written record shall be made of the decision and the justification. The administrative segregation review (Form I-885) shall be used for the review.
  - 3) If the detainee has been segregated for his/her own protection, but not at the detainee's request, the signature of the facility administrator or assistant facility administrator is required on the Form I-885 to authorize the alien's continued detention.
- b. A supervisor shall conduct an identical review after the detainee has spent seven days in administrative segregation, and every week thereafter, for the first 30 days and every 10 days thereafter, at a minimum.
- c. The review shall include an interview with the detainee, and a written record shall be made of the decision and its justification.
- d. When the reviewing authority concludes that the detainee should be removed from administrative segregation, he/she shall submit that recommendation to the facility administrator (or designee) for approval.
- e. A copy of the decision and justification for each review shall be given to the detainee unless, in exceptional circumstances, this provision would jeopardize the facility's safety, security, or orderly

operations. The detainee shall also be given an opportunity to appeal a review decision to the facility administrator.

- f. After seven consecutive days in administrative segregation, the detainee may exercise the right to appeal the conclusions and recommendations of any review conducted to the facility administrator. The detainee may use any standard form of written communication, for example, a detainee request, to file the appeal.
- g. If a detainee has been in administrative segregation for more than 30 days and objects to that status, the facility administrator shall review the case to determine whether that status should continue. This review shall take into account the detainee's views and shall result in a written record of the decision and its justification. A similar review shall take place each 30 days thereafter.

A multi-disciplinary committee of facility staff, including facility leadership, medical and mental health professionals, and security staff, shall meet weekly to review all detainees currently housed in the facility's SMU. During the meeting, the committee shall review each detainee individually to ensure all staff are aware of the detainee's status, current behavior, and physical and mental health, and to consider whether any change in status is appropriate. Upon the request of the Field Office Director, the facility administrator shall permit ICE/ERO personnel to participate in the weekly meetings, either in person or by teleconference.

## B. Placement in Disciplinary Segregation

To provide detainees in the general population a safe and orderly living environment, facility authorities may discipline anyone whose behavior does not comply with facility rules and regulations. Such discipline may involve temporary confinement in the SMU, apart from the general population. A detainee may be placed in disciplinary segregation only by

order of the IDP, or its equivalent, after a hearing in which the detainee has been found to have committed a prohibited act and only when alternative dispositions may inadequately regulate the detainee's behavior.

### 1. Duration

The maximum sanction is 30 days in disciplinary segregation per incident, except in extraordinary circumstances, such as incidents involving violations of offense 100 through 109 listed in the "Greatest" offense category in Appendix 3.1.A. After the first 30 days, and each 30 days thereafter, the facility administrator shall send a written justification for the continued segregation to the Field Office Director.

### 2. Disciplinary Segregation Order

A written order shall be completed and signed by the chair of the IDP (or disciplinary hearing officer) before a detainee is placed into disciplinary segregation.

- a. Prior to a detainee's actual placement in disciplinary segregation, the IDP chairman shall complete the disciplinary segregation order (Form I-883 or equivalent), detailing the reasons for placing a detainee in disciplinary segregation. All relevant documentation must be attached to the order.
- b. The completed disciplinary segregation order shall be immediately provided to the detainee in a language or manner the detainee can understand, unless delivery would jeopardize the safe, secure, or orderly operation of the facility.

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

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



The order shall remain on file with the SMU until the detainee is returned to the general population.

- c. When the detainee is released from the SMU, the releasing officer shall indicate the date and time of release on the disciplinary segregation order. The completed order shall then be forwarded to the Chief of Security for inclusion in the detainee's detention file.

### **3. Review of Detainee Status in Disciplinary Segregation**

All facilities shall implement written procedures for the regular review of all disciplinary segregation cases, consistent with the following procedures:

- a. A security supervisor, or the equivalent, shall interview the detainee and review his/her status in disciplinary segregation every seven days to determine whether the detainee:
  - 1) Abides by all rules and regulations; and,
  - 2) Is provided showers, meals, recreation and other basic living standards, as required by this detention standard.
- b. The supervisor shall document his/her findings after every review, by completing a disciplinary segregation review (Form I-887).
  - 1) The supervisor may recommend the detainee's early release from the SMU upon finding that time in disciplinary segregation is no longer necessary to regulate the detainee's behavior.
  - 2) An early-release recommendation must have the facility administrator's approval before the detainee may be returned to the general population. In conducting this review, the facility administrator will consider any request by the detainee to present written evidence or available witnesses. The review shall take into account the detainee's views.
  - 3) The supervisor may shorten, but not extend, the original sanction.

- 4) All review documents shall be placed in the detainee's detention file.
- 5) After each formal review, the detainee shall be given a written copy of the reviewing officer's decision and the basis for his/her finding, unless such a copy may result in a compromise of institutional security. If a written copy cannot be delivered, the detainee shall be advised of the decision orally, and the detention file shall so note, identifying the reasons why the notice was not provided in writing.
- c. The facility administrator shall review the status of a detainee in disciplinary segregation after the first 30 days of segregation, and each 30 days thereafter, to determine whether continued detention in disciplinary segregation is warranted.

A multi-disciplinary committee of facility staff, including facility leadership, medical and mental health professionals, and security staff, shall meet weekly to review all detainees currently housed in the facility's SMU. During the meeting, the committee shall review each detainee individually to ensure all staff are aware of the detainee's status, current behavior, and physical and mental health, and to consider whether any change in status is appropriate. Upon the request of the Field Office Director, the facility administrator shall permit ICE/ERO personnel to participate in the weekly meetings, either in person or by teleconference.

### **C. Notifying ICE of Segregation Placements and Facilitating ICE Review**

#### **1. Extended Segregation Placements**

The facility administrator must notify the appropriate Field Office Director in writing whenever an ICE detainee has been held continuously in segregation for:

- a. 14 days, or 14 days out of any 21 day period;
- b. 30 days; and

- c. At every 30-day interval thereafter.

## 2. Immediate Notifications

The facility administrator must notify the appropriate Field Office Director in writing as soon as possible, but no later than 72 hours after the initial placement of an ICE detainee in segregation if:

- a. The 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, a serious medical illness, a serious physical disability, or is pregnant or recently had a miscarriage.

For the purposes of this standard, detainees with special vulnerabilities include those:

- a. Who are known to be suffering from mental illness or serious medical illness;
- b. Who have a disability or are elderly, pregnant, or nursing;
- c. Who would be susceptible to sexual abuse or assault in the general population;
- d. Who would be susceptible to harm in the general population due in part to their sexual orientation or gender identity; or
- e. Who have been victims – in or out of ICE custody – of sexual assault, torture, trafficking, or abuse.

## 3. Updates to Segregation Status

The facility administrator must also notify the appropriate Field Office Director in writing whenever a detainee who has been the subject of a prior notification pursuant to this section is subsequently released from segregation.

## 4. Coordination with Field Offices in Reviewing Segregation Placements

The facility administrator shall provide all information and supporting documentation regarding segregation placements as requested by the Field Office Director. The facility administrator shall also coordinate with the Field Office Director in:

- a. considering whether a less restrictive housing or custodial option is appropriate and available, including return to the general population or options to limit isolation while housed in the SMU, such as additional out of cell time and the ability to participate in group activities; and
- b. recommending whether transfer may be appropriate to a hospital or 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, a facility that has a dedicated protective custody unit, or a facility that has a Special Management Unit with enhanced privileges.

## D. Logs and Records

### 1. Permanent SMU Log

A permanent log shall be maintained in the SMU to record all activities concerning SMU detainees (e.g., meals served, recreational time, visitors, etc.).

The SMU log shall record the detainee's name, A-number, housing location, date admitted, reasons for admission, status review dates, tentative release date (for detainees in disciplinary segregation), the authorizing official, and date released. These logs shall also be used by supervisory staff and other officials to record their visits to the unit.

### 2. Visitors' Log

A separate log shall be maintained in the SMU of all

persons visiting the unit. This separate record shall include notation of:

- a. the time and date of the visit, and
- b. any unusual activity or behavior of an individual detainee, with a follow-up memorandum sent through the facility administrator to the detainee's file.

### 3. Special Management Housing Unit Record

The Special Management Housing Unit Record or comparable form shall be prepared immediately upon the detainee's placement in the SMU.

- a. The special housing unit officer shall immediately record:
  - 1) whether the detainee ate, showered, recreated and took any medication; and
  - 2) any additional information, such as whether the detainee has a medical condition, or has exhibited suicidal/assaultive behavior.
  - 3) the officer that conducts the activity shall print his/her name and sign the record.
- b. The facility medical officer shall sign each individual's record when he/she visits a detainee in the SMU. The housing officer shall initial the record after the medical visits are completed, but no later than the end of the shift.
- c. A new form must be created for each week the detainee is in the SMU. The completed weekly forms shall be retained at the SMU until the detainee is released from the SMU.
- d. Upon a detainee's release from the SMU, the releasing officer shall attach that detainee's entire housing unit record to either the administrative segregation order or disciplinary segregation order and forward it to the Chief of Security or equivalent for inclusion into the detainee's detention file.

## E. Basic Requirements for All Special Management Units

Conditions of confinement are based on the amount of supervision required to control a detainee and to safeguard the detainee, other detainees and facility staff.

In every instance, any exceptions to these requirements shall be:

1. made only for the purpose of ensuring detainee and facility staff safety and security (i.e., not for purposes of punishment);
2. approved by a supervisor (or higher official);
3. on a temporary and situational basis, continued only for as long as it is justified by threat to the safety or security of the facility, its staff, or detainee population; and
4. documented in the Permanent SMU Unit log and, under circumstances specified later in this detention standard, documented in a memo which shall be placed in the individual detainee's detention file.

When a detainee in an SMU is deprived of any usual authorized items or activity, a report of the action shall be forwarded to the facility administrator for review. This report shall be made part of the detainee's detention file.

Placement in an SMU does not constitute a valid basis for the use of restraints while in the SMU or during movement around the facility. Consistent with Standard 2.15, restraints should only be used if necessary as a precaution against escape during transfer, for medical reasons (when directed by the medical officer), or to prevent self-injury, injury to others, or serious property damage.

## F. Translation/Interpretation Services

Detainees shall be provided translation or interpretation services while in the SMU, to assist with their understanding of the reason and conditions of confinement as well as their rights and

responsibilities while in confinement.

## G. Special Needs

Detainees in the SMU shall be provided appropriate accommodations and professional assistance for disabilities and/or other special needs (e.g., medical, therapeutic, or mental health treatment), on an equal basis as those in the general population.

## H. Control of Contraband and Tools

In accordance with procedures detailed in standard “2.4 Facility Security and Control,” each facility administrator is required to establish written policy and procedures to control and secure SMU entrances, contraband, tools and food carts.

## I. Cell Occupancy

Ordinarily, the number of detainees confined to each cell or room may not exceed the capacity for which it was designed. Under exigent circumstances, before approving any additional cell occupancy on a temporary basis, the facility administrator shall consult with ICE/ERO Detention Management Division, who shall consult with DHS/ICE legal counsel. If a decision is made to approve such additional cell occupancy, a report of the action shall be filed with the facility and with the Field Office Director.

## J. Cell Condition

Cells and rooms used for purposes of segregation must be well ventilated, adequately lit, appropriately heated/cooled and maintained in a sanitary condition at all times in accordance with the standards for general population, consistent with safety and security.

1. All SMU cells must be equipped with beds that are securely fastened to the cell floor or wall. SMU cells must also be conducive to maintaining a safe and secure environment for all detainees, with particular emphasis on allowing for full visibility and appropriate observation by staff and

wherever possible on eliminating potential safety hazards such as sharp edges and anchoring devices.

2. Conditions for close observation in a “dry cell” without water are detailed in standard “2.10 Searches of Detainees.”

## K. Personal Property

Each facility shall issue guidelines in accordance with this standard concerning the property detainees may retain in each type of segregation. Generally, detainees in disciplinary segregation shall be subject to more stringent personal property restrictions and control than those in administrative segregation, given the non-punitive nature of administrative segregation.

## L. Privileges

Each facility shall issue guidelines in accordance with this standard concerning the privileges detainees may have in each type of segregation.

### 1. Administrative Segregation

Generally, these detainees shall receive the same privileges available to detainees in the general population, consistent with any safety and security considerations for detainees, facility staff and security.

When space and resources are available, detainees in administrative segregation may be provided opportunities to spend time outside their cells (in addition to the required recreation periods), for such activities as socializing, watching TV and playing board games, and may be assigned to work details (e.g., as orderlies in the SMU).

### 2. Disciplinary Segregation

Generally, these detainees shall have fewer privileges than other detainees in either the general population or in administrative segregation. More specifically, they are subject to more stringent personal property control including, but not limited to, limitations on

their reading material and television viewing (which may be completely terminated), and restricted commissary or vending machine purchases.

## M. Close Supervision

Detainees in SMU shall be personally observed and logged at least every 30 minutes on an irregular schedule. For cases that warrant increased observation, the SMU personnel shall personally observe detainees accordingly. (See also standard “4.6 Significant Self-harm and Suicide Prevention and Intervention” and the “Dry Cells” section in standard “2.10 Searches of Detainees.”)

## N. Supervisory and Staff Visits

In addition to the direct supervision performed by unit staff:

1. The shift supervisor shall see each segregated detainee daily, including on weekends and holidays.
2. The facility administrator (or designee) shall visit each SMU daily.
3. Program staff may visit a detainee upon his/her request.

The facility administrator may require other staff to visit each detainee daily.

## O. Specialized Training

Assignments of dedicated and specially trained security staff to SMUs permit staff to have both an improved understanding of the nature of the population and a greater familiarity with particular detainees. Interactions with security staff may be the primary human contact regularly afforded to detainees, and positive communications with security staff can reduce violence and are also important to the well-being of segregated detainees. Adequate training and supervision can ensure that all staff assigned to SMUs live up to this principle.

Security staff assigned to SMU shall receive specialized training in relevant topics, such as:

1. Identifying signs of mental health decompensation;
2. Techniques for more appropriate interactions with mentally ill detainees;
3. The impact of isolation; and
4. De-escalation techniques.

## P. Health Care

Detainees must be evaluated by a medical professional prior to placement in an SMU (or when that is infeasible, as soon as possible and no later than within 24 hours of placement). The assessment should include a review of whether the detainee has been previously diagnosed as having a mental illness.

Health care personnel shall conduct face-to-face medical assessments at least once daily for detainees in an SMU. Where reason for concern exists, assessments shall be followed up with a complete evaluation by a qualified medical or mental health professional, and indicated treatment.

Medical visits shall be recorded on the SMU housing record or comparable form, and any action taken shall be documented in a separate logbook. The facility shall provide out-of-cell, confidential psychological assessments and visits for detainees whenever possible, to ensure patient privacy and to eliminate barriers to treatment.

Mental health staff shall conduct a face-to-face psychological review of all detainees in an SMU at least once every 30 days.

Detainees with a medical or mental illness, or identified as being a suicide risk or on a hunger strike shall be removed from segregation if IHSC or facility medical staff determine that the segregation placement has resulted in deterioration of the detainee's medical or mental health, and an appropriate alternative is available.

### 1. Detainees with Serious Mental Illnesses

Detainees with a serious mental illness, disorder or

condition (SMI), as defined in Standard 4.3 “Medical Care”, may not be automatically placed in an SMU on the basis of such mental illness. Every effort shall be made to place detainees with an SMI in a setting in or outside of the facility in which appropriate treatment can be provided, rather than an SMU, if separation from the general population is necessary.

The facility shall coordinate with the Field Office Director in seeking alternatives to SMU housing for detainees with an SMI, potentially including transfer to a hospital or to another facility.

For any detainee with an SMI placed in restrictive housing:

1. Mental health staff shall conduct a mental health consultation within 72 hours of the detainee’s placement in restrictive housing;
2. A multi-disciplinary committee of facility staff, including facility leadership, medical and mental health professionals, and security staff, shall meet weekly to review the detainee’s placement in restrictive housing;
3. At least weekly, a mental health provider shall conduct face-to-face clinical contact with the detainee, to monitor the detainee’s mental health status, identify signs of deterioration, and recommend additional treatment as appropriate.

The facility shall seek to develop enhanced opportunities for in-cell and out-of-cell therapeutic activities and additional unstructured out-of-cell time for detainees with an SMI, to the extent such activities can be conducted while ensuring the safety of the detainee, staff, and other detainees.

## 2. Pregnant Detainees

Women who are pregnant, who are post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy should as a general matter not be placed in an SMU. In very rare situations, a woman who is pregnant, is postpartum, recently had a miscarriage, or recently had a terminated

pregnancy may be placed in an SMU as a response to behavior that poses a serious and immediate risk of physical harm, or if the detainee has requested to be placed in protective custody administrative segregation and there are no more appropriate alternatives available. Even in such cases, this decision must be approved by a representative of the detention facility administration, in consultation with a medical professional, and must be reviewed every 48 hours.

## Q. Meals

Detainees in SMU shall be provided three nutritionally adequate meals per day, according to the general population meal schedule and ordinarily from the same menu. Deviation from meals served to the general population must be documented, including an explanation as to why SMU did not receive the same meal.

## R. Clothing and Personal Hygiene

In accordance with standard “4.5 Personal Hygiene,” detainees in SMU may shave and shower at least three times weekly and receive other basic services such as laundry, hair care, barbering, clothing, bedding and linen equivalent to general population detainees and consistent with safety and security of the facility.

1. As needed, staff shall provide toilet tissue, a wash basin, tooth brush and shaving utensils, and may issue retrievable kits of toilet articles.
2. A detainee may be denied such items as clothing, mattress, bedding, linens, or pillow for medical or mental health reasons if his/her possession of such items raises concerns for detainee safety and/or facility security.
  - a. All denials of such items shall be documented.
  - b. If a detainee is so disturbed that he/ she is likely to destroy clothing or bedding, or create a disturbance by risking harm to self or others, the medical department shall be notified



immediately and a regimen of treatment and control shall be instituted by the medical staff, as necessary.

- c. Extreme detainee behavior, such as destroying clothing or bedding or harmful behavior to self or others, must be documented, made part of the detainee's file with the facility, and reported to the Field Office Director to implement necessary efforts to protect and care for the detainee.

## S. Correspondence

In accordance with standard "5.1 Correspondence and Other Mail," detainees in an SMU may write, send and receive letters and other correspondence, in a manner similar to those housed in the facility's general population.

## T. Visitation

In accordance with standard "5.7 Visitation," while in an SMU, a detainee ordinarily retains visiting privileges.

Segregated detainees may ordinarily use the visiting room during normal visiting hours. However, the facility may restrict or disallow visits for a detainee who violates visitation rules or whose behavior otherwise indicates the detainee would be a threat to the security or the good order of the visiting room.

1. Visitation may be restricted or disallowed when a detainee in administrative segregation is charged with, or has been found to have committed a prohibited act related to visiting privileges, or has otherwise acted in a way that would reasonably indicate that he/she would be a threat to the orderliness or security of the visiting room.
2. Under no circumstances may detainees participate in visitation while in restraints. If the detainee's behavior warrants restraints, the visit may not be granted under general population visiting conditions.
3. Where visits are restricted or disallowed, a report

shall be filed with the facility administrator and ICE/ERO, and made part of the detainee's file.

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

## U. Legal Visits

In accordance with standard "5.7 Visitation," detainees in SMU may not be denied legal visitation. However, the facility administrator or designee may implement whatever security precautions are necessary to protect the detainee and visitors and maintain good order. In such cases, staff shall advise legal service providers and assistants of any security concerns as soon as possible.

## V. Religious Guidance

In accordance with standard "5.5 Religious Practices," detainees in an SMU shall be permitted to participate in religious practices, consistent with the safety, security, and orderly operation of the facility.

Detainees in an SMU shall be allowed visits by members of the clergy or other religious service providers, upon request, unless the supervisor determines that such a visit presents a safety or security risk or would interfere with the orderly operation of the facility. Violent or uncooperative detainees may be temporarily denied access to religious guidance. Staff shall advise the religious service provider of the detainee's present state of behavior before he/she agrees to visit the detainee.

Each facility shall develop procedures to allow detainees to retain religious items within their possession (e.g., religious wearing apparel, religious headwear, prayer rugs, beads, prayer rocks, medallions) consistent with good security practices. (See also standard "5.5 Religious Practices").

## W. Reading Materials (Non-Legal)

Detainees in SMU shall have access to reading materials, including religious materials, in English, Spanish, and other languages frequently encountered in the facility population. The Recreation Specialist shall offer each detainee soft-bound, reading materials of this type on a rotating basis.

## **X. Legal Materials**

Detainees in SMU shall have access to legal materials in accordance with standard “6.3 Law Libraries and Legal Material.”

Detainees may retain all personal legal material upon admittance to an SMU, provided such material does not create a safety, security, or sanitation hazard.

Detainees with a large amount of personal legal material may be required to place a portion with their stored personal property, with access permitted during scheduled hours. Requests for access to such legal material shall be accommodated as soon as possible, but in no case more than 24 hours after receipt of the initial detainee request to retrieve documents, except in the event of documented security reasons.

## **Y. Law Library and Legal Rights Group Presentations Access**

In accordance with standard “6.3 Law Libraries and Legal Material,” detainees housed in administrative segregation or disciplinary segregation units shall have the same law library access as the general population, unless compelling security concerns require limitations.

1. Facilities may supervise the library use of a detainee housed in an SMU as warranted by the individual’s behavior. Violent or uncooperative detainees may be temporarily denied access to the law library if necessary to maintain security, until such time as their behavior warrants resumed access. In some circumstances, legal material may be brought to individuals in disciplinary segregation.

2. Detainees segregated for protection must be provided access to legal materials. Such detainees may be required to use the law library separately or, if that is not feasible, legal materials must be brought to them, upon request.
3. Denial of access to the law library must be:
  - a. supported by compelling security concerns;
  - b. for the shortest period required for security; and
  - c. fully documented in the SMU housing logbook.

The facility administrator shall notify ICE/ERO every time access is denied, with documentation placed in the detention file.

In accordance with standard “6.4 Legal Rights Group Presentations,” facility staff and/or ICE/ERO shall notify detainees in segregation in advance of legal rights group presentations and provide these detainees an opportunity to attend. Group legal rights presentations shall be open to all detainees, including detainees in SMUs, except when a particular detainee’s attendance may pose a security risk. If a detainee in segregation cannot attend for this reason, designated facility staff shall make alternative arrangements to offer a separate presentation and individual consultation to the detainee, if the detainee or the presenter so requests.

## **Z. Recreation**

Recreation for detainees housed in the SMU shall be separate from the general population.

Facilities are encouraged to maximize opportunities for group participation during recreation and other activities, consistent with safety and security considerations. Recreation for certain individuals shall occur separate from all other detainees when necessary or advisable to prevent assaults and to reduce management problems. In accordance with standard “5.4 Recreation”:

1. Each detainee in the SMU shall receive (or be



offered) access to exercise opportunities and equipment outside the living area and outdoors, unless documented security, safety or medical considerations dictate otherwise.

2. Detainees in the SMU for administrative reasons shall be offered at least one hour of recreation per day, outside their cells and scheduled at a reasonable time, at least seven days per week. Detainees in the SMU for disciplinary reasons shall be offered at least one hour of recreation per day, outside their cells and scheduled at a reasonable time, at least five days per week.

*\*\*Detainees in the SMU for administrative reasons shall be offered at least two hours of exercise per day, seven days a week, unless documented security, safety or medical considerations dictate otherwise.*

*\*\*Detainees in the SMU for disciplinary reasons shall be offered at least one hour of exercise per day, seven days a week, unless documented security, safety or medical considerations dictate otherwise.*

3. Where cover is not provided to mitigate inclement weather, detainees shall be provided weather-appropriate equipment and attire
4. The recreation privilege shall be denied or suspended only if the detainee's recreational activity may unreasonably endanger safety or security:
  - a. A detainee may be denied recreation privileges only with the facility administrator's written authorization, documenting why the detainee poses an unreasonable risk even when recreating alone. However, when necessary to control an *immediate* situation for reasons of safety and security, SMU staff may deny an instance of recreation, upon verbal approval from the shift supervisor, and shall document the reasons in the unit logbook(s). The supervisor may also require additional written

documentation from the SMU staff for the facility administrator. When a detainee in an SMU is deprived of recreation (or any usual authorized items or activity), a written report of the action shall be forwarded to the facility administrator. Denial of recreation must be evaluated daily by a shift supervisor.

- b. A detainee in disciplinary segregation may temporarily lose recreation privileges upon a disciplinary panel's written determination that he/she poses an unreasonable risk to the facility, himself/herself, or others.
- c. When recreation privileges are suspended, the disciplinary panel or facility administrator shall provide the detainee written notification, including the reason(s) for the suspension, any conditions that must be met before restoration of privileges, and the duration of the suspension provided the requisite conditions are met for its restoration.
- d. The denial of recreation privileges shall be included as part of the regular reviews required for all detainees in SMU status. In accordance with SMU procedures, and using the forms required by this standard, the reviewer(s) shall state, in writing, whether the detainee continues to pose a threat to self, others, or facility security and, if so, why.
- e. Denial of recreation privileges for more than seven days requires the concurrence of the facility administrator and a health care professional. It is expected that such denials shall rarely occur, and only in extreme circumstances.
- f. The facility shall notify the Field Office Director in writing when a detainee is denied recreation privileges in excess of seven days.

## AA. Other Programs and Activities

The facility should seek ways to increase the minimum amount of time that detainees in the SMU

spend outside their cells, and to offer enhanced in-cell opportunities. In addition to recreation, out-of-cell time might include opportunities for education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other detainees.

### **BB Telephone Access**

As detailed in standard “5.6 Telephone Access,” detainees in SMU shall have access to telephones in a manner that is consistent with the special safety and security requirements of such units. Detainees shall be permitted to place calls to attorneys, other legal representatives, courts, government offices (including the DHS Office of the Inspector General, DHS Office for Civil Rights and Civil Liberties, ICE/OPR Joint Intake Center, and embassies or consulates, according to the facility schedule. Any denial of telephone access shall be documented.

In general, any detainee in an SMU may be

reasonably restricted from using or having access to a phone if that access is used for criminal purposes or would endanger any person, or if the detainee damages the equipment provided. In such instances, staff must clearly document why such restrictions are necessary to preserve the safety, security and good order of the facility. Detainees in disciplinary segregation may be restricted, as part of the disciplinary process, from using telephones to make general calls. However, even in disciplinary segregation, detainees shall have telephone access for special purposes.

### **CC. Review of policies**

The facility administrator shall establish a standing committee, consisting of security, medical, and other staff, to regularly evaluate SMU policies and practices, and seek to develop safe and effective alternatives to restrictive housing, as well as enhanced SMU conditions and programs.

# EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

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**CARLOS MURILLO VEGA**

Plaintiff,

v.

**MANAGEMENT & TRAINING CORPORATION**

Defendant.

**Case No. 3-21-cv-01770-GPC-LR**

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**SUPPLEMENTAL EXPERT REPORT OF  
BRADFORD E. HANSEN**

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**January 13, 2023**

## **I. SUMMARY**

1. I was specifically asked to consider and analyze the opinions and conclusions that were expressed in the December 17, 2022, Expert Report of Mary M. Mitchell (the “Mitchell Report”). I was asked by the plaintiff in this case to consider whether Mary M. Mitchell’s opinions affect my own, and address certain of her opinions. The facts and data that I relied upon in forming my responses that are expressed in this report are attached as exhibits to my December 19, 2022 report.<sup>1</sup>

2. I have reviewed and considered the opinions expressed by Ms. Mitchell in the Mitchell Report. For the reasons explained in my initial report and throughout this report, it remains my opinion that Management and Training Corporation (“MTC”), who was contracted by the Immigration and Customs Enforcement (“ICE”), violated the detention standards of care and confinement that were agreed upon to operate the Imperial Regional Detention Facility (“IRDF”).

3. It also remains my opinion that MTC’s use of Administrative Segregation for long term protective custody, failure to provide the necessary verification and documentation to justify their classification decisions, failure to provide detainees in protective custody with programs and services available to those in general population, failure to provide one hour of recreation time per day, and allowing the comingling between protective custody detainees and detainees on disciplinary segregation fail to comply with the Performance Based National Detention Standards 2011 (revised dec. 2016) (“PBNDs”). These failures created harm to the plaintiff, Mr. Murillo, by subjecting him to 14 months of improper segregation and isolation.

4. I disagree with many of the conclusions expressed in the Mitchell Report. Nothing expressed in the Mitchell Report warrants revision of the opinions stated in my initial expert witness report.

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<sup>1</sup> Expert Report of Bradford E Hansen, dated December 19, 2022.

## **II. FAILURE TO PROVIDE METHODOLOGY**

5. Ms. Mitchell failed to explain the methodology she used to evaluate the materials that were provided to her in developing her opinions. Ms. Mitchell did not visit the IRDF, and did not consider how applicable policies and standards compare to the actual conditions in the housing units where Mr. Murillo was housed. Ms. Mitchell also failed to compare the actual duties and actions of the staff to the required standards and policies that were in effect. Ms. Mitchell failed to compare statements from the detention facility staff to the required standards and policies that were in effect. Ms. Mitchell does not appear to have used any generally accepted methodology to evaluate whether MTC adhered to the standards and regulations outlined in the PBNDS.

## **III. ANALYSIS OF OPINIONS BY MARY M. MITCHELL**

6. In this supplemental report, I highlight some of the significant deficiencies in the Mitchell Report; I do not attempt to identify or discuss all its deficiencies.

### **A. The Mitchell Report Erroneously Concludes That MTC Staff Used the Least Restrictive Means Available to Protect Detainee Mr. Murillo From Harm**

7. Ms. Mitchell failed to consider MTC's responsibility to follow the PBNDS at IRDF, which are designed to protect detainees and safeguard humane conditions. Ms. Mitchell erroneously concludes that Mr. Murillo is responsible for his conditions of confinement due to his request for protective custody upon being received by MTC at IRDF, and that MTC did what it could to provide adequate and safe housing for him. However, Ms. Mitchell admits that Mr. Murillo's living conditions were in fact not adequate. She states that, "[w]hile the length of protective custody of detainee Murillo-Vega may not be typical nor ideal, this was the only option."<sup>2</sup>

8. Ms. Mitchell failed to address MTC's obligation to follow PBNDS provisions that using a segregation unit for protective custody should be a last resort. Section 2.12.II.4 of the PBNDS states that while "[a]dministrative segregation may also be available to detainees for the

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<sup>2</sup> Mitchell Report at 8.



purpose of providing ‘protective custody[,]’ a detainee shall be placed in protective custody status in administrative segregation “only when there is documentation and supervisory approval that it is necessary to protect a detainee from harm and that no reasonable alternatives are available.”<sup>3</sup>

9. Ms. Mitchell failed to consider alternatives to placing Mr. Murillo in segregation for 14 months. It is important that detention facility staff fulfill their duties to protect detainees because one’s ability to protect oneself is severely limited when detained. Detainees are dependent on staff for everything from showers and food, to visits and medical and mental health care. It is also very important that staff follow established policies and procedures in order to prevent undue psychological effects of long-term segregation. Detainees are not authorized to determine their own custody classification or housing unit placement. They must rely upon staff to make objective and unbiased decisions based on established rules, regulations, and practices. In other words, MTC is responsible for ensuring that detainees are not held in segregation longer than necessary and for providing appropriate housing for detainees. Ms. Mitchell failed to consider whether MTC could have provided Mr. Murillo with appropriate housing by transferring him to another detention center, creating a separate housing unit specifically for protective custody detainees, providing him with additional protection within a general population dorm by assigning him to a cell near the officer’s station, and/or changing the classification of protective custody detainees so they could live in a lower custody housing unit. Ms. Mitchell concludes that MTC had no other options regarding where Mr. Murillo could live, but does not provide any analysis in support of that conclusion, nor does she describe a generally accepted industry standard concerning the method she used to inform her conclusions.

10. In addition, Ms. Mitchell’s conclusion concerning the absence of appropriate alternatives is directly contradicted by the record evidence in this matter. Edward Ruiz, the Deputy Warden at IRDF, admitted in his deposition that the MIKE unit, which was used to house

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<sup>3</sup> PBNDS § 2.12(II)(4).

protective custody detainees, including Mr. Murillo for two weeks, was a reasonable alternative to administrative segregation.<sup>4</sup> In addition, the IRDF had previously used Charlie unit (a high/medium-high general population dorm) as a housing option for high custody individuals who were in need of some protection, but who did not want to be in the segregation unit, between 2015 and approximately March 2020.<sup>5</sup> Ramon Veloz, Classification Supervisor, testified that placing a protective custody detainee in a general population dorm and assignment to a bed near the officers' station is another viable alternative to administrative segregation.<sup>6</sup> Ms. Mitchell did not consider any of these alternatives in reaching her erroneous conclusions. Instead, Ms. Mitchell relied on the assertions of MTC staff that there was no reasonable alternative other than to keep Mr. Murillo in segregation for 14 months. Ms. Mitchell also failed to address the Office of the Inspector General report, which also confirmed that ICE and MTC facility staff did not seek any alternative, less-restrictive housing for detainees in administrative segregation, as required by the PBNDS.

**B. The Mitchell Report Fails to Meaningfully Consider Whether MTC Was Negligent in Its Failure to Provide Adequate Reviews**

11. Ms. Mitchell did not consider or discuss PBNDS Section 2.2 (Custody Classification System) or PBNDS Section 2.12 (Special Management Units) in forming her opinions concerning whether Mr. Murillo should have been assigned to protective custody.<sup>7</sup> To comply with those standards, IRDF was required to conduct an 'individualized assessment' before Mr. Murillo could be placed in protective custody.<sup>8</sup> In making this assessment, IRDF was required to consider "not only of a detainee's custody classification, but also that detainee's general case status, disciplinary record, housing, special needs, adjustment to institutional living, opportunities for voluntary work assignments, and general well-being in assessing a detainee's

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<sup>4</sup> Ruiz Tr. at 141:6-21.

<sup>5</sup> Veloz Tr. at 243:25-247:11.

<sup>6</sup> Veloz Tr. at 155:16-159:23.

<sup>7</sup> PBNDS § 2.2.

<sup>8</sup> PBNDS § 2.12(V)(A)(1).



initial and continued classification.<sup>9</sup> PBNDS further requires that the classification decision be made “based on verifiable and documented data,” and not on “unverified personal opinion of officers” or “unconfirmed and unverified information provided by the detainee.”<sup>10</sup> MTC’s own policies and procedures incorporate all such requirements of the PBNDS.<sup>11</sup>

12. Ms. Mitchell does not address that the only justification MTC identified for assigning Mr. Murillo to protective custody appears to be a statement in the Administrative Segregation Order indicating that “upon conducting R&D initial intake review interview on 12-13-19, detainee Murillo-Vega advised/stated that he would need PC housing due to his previous Special Needs Yards (“SNY”) housing history.”<sup>12</sup> Ms. Mitchell does not explain why she felt that statement met the requirements of PBNDS. In my view, this statement is insufficient to comply with PBNDS standards, MTC’s own policies and procedures, or accepted practices. It contains no information concerning why Mr. Murillo may have made that request, whether there was any factual basis for the request, or whether Mr. Murillo understood what conditions were like in the segregated units in MTC. Indeed, Mr. Veloz testified that he did not know of any factual basis that would require Mr. Murillo to be placed in protective custody. In addition, the evidence is clear that Mr. Murillo was not informed and did not understand (a) what the conditions in MTC’s protective custody housing would be like; or (b) that by choosing protective custody initially, he would likely be in protective custody for his entire detention period.<sup>13</sup> Mr. Veloz admitted that he did not know that Mr. Murillo had been in a 50/50 SNY, which is a dorm, as opposed to a traditional SNY, which is a segregation unit, at Calipatria State Prison despite the fact that such information was essential to Mr. Murillo’s housing placement because – as admitted by Mr. Veloz – a person in a 50/50 SNY would be less likely to require protective

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<sup>9</sup> PBNDS § 2.2(I).

<sup>10</sup> PNBS § 2.2 (I); § 2.2 (V)(A)(1).

<sup>11</sup> MTC002669.

<sup>12</sup> MTC000596.

<sup>13</sup> Veloz Tr. at 23:22-226:24, 276:4-276:10.

custody at IRDF than someone who was in a traditional SNY.<sup>14</sup> Ms. Mitchell did not discuss any of these factors in her report.

13. In addition, Ms. Mitchell's conclusion that MTC's failure to provide appropriate housing is excused by Mr. Murillo initial request to be placed in protective custody and/or purported failure to take sufficient steps to leave protective custody is without merit. PBNDs and accepted industry standards require MTC to provide acceptable housing for Mr. Murillo, regardless of whether or not he explicitly requests it.

14. Ms. Mitchell states that MTC conducted weekly status reviews for protective custody detainees, but she did not address whether the review itself was meaningful, sufficient, and documented. PBNDs requires that protective custody classifications are revisited regularly with sufficient analysis and documentation.<sup>15</sup> As part of its weekly reviews, MTC staff was required to complete administrative review forms to document the detainee's current status, evaluate whether the detainee could be returned to general population, and explain any necessary changes.<sup>16</sup> Instead of conducting an individualized assessment of each detainee, MTC staff completed simple checklists with "yes/no" answers documenting information such as whether the detainee had access to showers and meals, and whether visits from medical personnel were conducted. MTC's weekly assessment forms did not prompt MTC staff to consider, and left no room for them to provide a written assessment of, whether the detainee needed to remain in protective custody. The weekly SMU Committee Meetings during which MTC claims to discuss these weekly assessment forms also do not provide space for an individualized assessment: the meeting minutes for the December 18, 2019 SMU Committee Meeting (the meeting at which Mr. Murillo's initial placement in SMU would have been discussed) reveal that MTC staff discussed 21 different detainees in 30 minutes, indicating that the "assessment" for any detainee lasted just

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<sup>14</sup> Veloz TR. at 268:3-271:5.

<sup>15</sup> PBNDs § 2.2 (III)(4); § 2.2(V)(E).

<sup>16</sup> MTC000367.

over one minute.<sup>17</sup> One minute per person is certainly not enough time to sufficiently discuss the status and circumstances of each detainee. Ms. Mitchell did not address any of these factors in her report.

15. Ms. Mitchell did not address why she thought it was appropriate for MTC to deny Mr. Murillo's November 18, 2020 request to move to general population. Although, on November 20, 2020, Jose Builteman responded to Mr. Murillo's request by claiming it had been "reviewed and considered by the SMU Committee on 11-18-20,"<sup>18</sup> there is no document in the record memorializing the November 18, 2020 meeting, nor is there any record reflecting what risks Mr. Murillo may have faced in general population. At his deposition, Mr. Builteman testified that his recommendation for Mr. Murillo to remain in SMU was based on general comments from other officers about a "wreck" that Mr. Murillo got into with the Sureños – a gang affiliation that operates in some detention centers. But Mr. Builteman had no recollection of which officers made those general comments, and they were never substantiated or even written down.<sup>19</sup> Further, the SMU committee claimed it determined that Mr. Murillo could not be transferred to general population because he had spent time in protective custody. This amounts to an institutional policy that once a detainee spends any time in protective custody, they cannot return to general population. Such a policy is inconsistent with generally accepted standards for detention facilities, including PBNDS.<sup>20</sup> Nonetheless, Ms. Mitchell did not address any of these factors in her report.

**C. The Mitchell Report Erroneously Concludes That Mr. Murillo Had Access to Programs Approximate to Those Provided to the General Population**

16. PBNDS requires that "[d]etainees who have been placed in administrative segregation for protective custody shall have access to programs, services, visitation, counsel and

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<sup>17</sup> Ruiz Tr. at 98:18-21.

<sup>18</sup> MTC000314.

<sup>19</sup> Builteman Tr. at 201:13-25.

<sup>20</sup> PBNDS § 2.2 (V)(C)(2).



other services available to the general population to the maximum extent possible.”<sup>21</sup> Ms. Mitchell does not explain the basis for her assertion that Mr. Murillo had access to programs approximate to those provided to the general population, and the record in this proceeding evidences material differences in the level of services available to general population and protective custody detainees. For instance, while detainees in the general population dorms at MTC had all-day access to a large outdoor recreation space in which they could recreate with fellow detainees,<sup>22</sup> detainees in the SMU had extremely limited access to the outdoors and often spent the outdoor time they did have alone and/or in a small “exercise cage.”<sup>23</sup> Additionally, while those in the general population dorms were able to comfortably watch television up to 17 hours per day in the dayroom,<sup>24</sup> individuals in the SMU were only able to see the television during the day if they stood up and peered through the small windows in their cell doors.

17. Ms. Mitchell also did not address the January 2021 California Department of Justice report following its inspection of three detention facilities, including IRDF. The California Department of Justice found that at IRDF, all Restrictive Housing Unit (SMU) detainees were required to remain in their cells for 22-23 hours per day. Only a few were able to get out for an additional hour in the recreation yard. Other than recreation, court and medical appointments, detainees at IRDF were permitted to only make phone calls, showers, eat, sleep, and use bathroom facilities in their cells.<sup>25</sup> The report also found that IRDF facility staff inaccurately reported to ICE that detainees were receiving recreation time when, in fact, they were not.<sup>26</sup> Ms. Mitchell does not explain why she failed to consider the California Department

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<sup>21</sup> PBNDs § 2.12 (V)(A)(1)(c).

<sup>22</sup> Cortez Tr. at 52:13-54:20.

<sup>23</sup> DSC\_0027.JPG, DSC\_0028.JPG; Rodriguez Tr. at 149:21-149:25; Cortez Tr. at 70:21-71:7.

<sup>24</sup> Cortez Tr. at 52:13-53:23.

<sup>25</sup> Cal. Dept. of Just., *The California Department of Justice's Review of Immigration Detention in California* (Jan. 2021) at 26.

<sup>26</sup> Office of Inspector General, *OIG-21-12, ICE needs to address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility* (Dec. 18, 2020) at 5.

of Justice report in reaching her conclusions. She also fails to address Mr. Ruiz's admissions that MTC did not make any changes to their policy and did not take any corrective action in response to these reports.<sup>27</sup>

**D. The Mitchell Report Errs By Opining On Mr. Murillo's Mental Health Even Though Ms. Mitchell Lacks Mental Health Expertise**

18. Ms. Mitchell erroneously asserts that Mr. Murillo received adequate mental health care because there were 15 documented encounters between him and a mental health professional. However, Ms. Mitchell has no expertise concerning mental health and cannot possibly know whether that number of encounters was or was not appropriate for Mr. Murillo's condition. The appropriate level of treatment for a detainee is based on their individual mental health needs, and cannot be satisfied by pointing to a number of visits without further context.

19. I am not a mental health expert, and have no opinion on whether Mr. Murillo had preexisting mental health issues before entering MTC. To the extent he did, however, MTC's obligation to provide appropriate healthcare to detainees includes providing appropriate diagnosis and treatment of any mental health concerns. Detainees should not be forced to suffer from undiagnosed and untreated mental health conditions.

20. The Mitchell Report also ignores the numerous studies demonstrating the significant negative psychological impact that long-term segregation can cause. The literature is clear that segregation exacerbates mental health concerns in detainees with pre-existing conditions. This is yet another reason why MTC should have taken appropriate steps to diagnose and treat Mr. Murillo's mental health.

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<sup>27</sup> Ruiz Tr. at 176:7 – 177:5

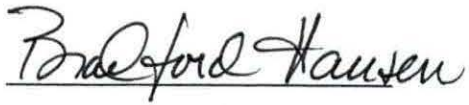
#### IV. CONCLUSION

21. MTC violated PBNDS regulations and generally accepted industry standards by assigning Mr. Murillo to protective custody without sufficient basis, and then by subjecting him to the SMU for 14 months and refusing Mr. Murillo's requests to transfer to general population. MTC improperly used SMU as a long-term solution for housing protective custody detainees, failed to provide protective custody detainees in SMU with sufficient access to programs and services, and failed to follow established classification guidelines when making decisions concerning the housing placement of detainees. I continue to believe that MTC improperly subjected Mr. Murillo to a long-term restricted environment without looking for less-restrictive alternatives. As a result, Mr. Murillo was subjected to 14 months of improper segregation and isolation.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: January 13, 2023

By:   
Bradford E. Hansen