UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DILLEY PRO BONO PROJECT, 111 Pipes Drive, Dilley, TX 78017; CAROLINE PERRIS, 111 Pipes Drive, Dilley, TX 78017; and SHALYN FLUHARTY, 111 Pipes Drive, Dilley, TX 78017, *Plaintiffs,* v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, 500 12th Street, S.W., Washington, DC 20536; U.S. DEPARTMENT OF HOMELAND SECURITY, 3801 Nebraska Avenue, N.W., Washington, DC 20016; JOHN F. KELLY, Secretary of Homeland Security, in his official capacity, 3801 Nebraska Avenue, N.W., Washington, DC 20016; THOMAS D. HOMAN, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity, 500 12th Street, S.W., Washington, DC 20536; and DANIEL A. BIBLE, Field Office Director, U.S. Immigration and Customs Enforcement, in his official capacity, 1777 NE Loop 410, Suite 1500, San Antonio, TX 78217, *Defendants.*	Civil Action No. 1:17-cv-_____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Each year, Defendant U.S. Immigration and Customs Enforcement (ICE) detains thousands of mothers and children who seek asylum or other protection in the United States. Legal service providers such as the Dilley Pro Bono Project (DPBP) invest money and other resources to provide access to legal assistance, and have constitutional and statutory rights to assist such individuals. ICE's largest family detention facility, the South Texas Family Residential Center (STFRC), is located near Dilley, Texas. At STFRC, DPBP generally represents between 100 and 500 new clients each week. This lawsuit arises from a new written ICE policy that arbitrarily interferes with the ability of DPBP staff to effectively represent their clients.

2. Since the establishment of STFRC in late 2014, ICE has cleared legal service providers to enter the facility to meet confidentially with detainees, provide legal advice, and assist them in preparing their cases. ICE provides offices and telephones that providers and detainees may use during their confidential meetings to call anyone they wish for case-related purposes, including mental health professionals.

3. Because the mothers and children held in STFRC have fled some of the most violent countries in the world, a mental health evaluation is often a crucial piece of evidence for them. Such an evaluation can bolster an asylum seeker's credibility by establishing that the trauma she has suffered impedes her ability to recount the circumstances that prompted her flight to the United States. Mental health evaluations also assist attorneys in determining if clients are competent to consent to representation, consult with their attorneys, and participate meaningfully in their cases.

4. In May 2017, ICE stated for the first time in writing a policy that a telephonic medical evaluation required pre-approval—and relied on this policy to justify its previous revocation of access to STFRC by Caroline Perris, one of DPBP's legal assistants, who had facilitated one such consultation without pre-approval two months before this announcement.

5. ICE's revocation of Ms. Perris's access to STFRC has significantly impeded the ability of DPBP and Shalyn Fluharty, DPBP's Managing Attorney, to provide effective legal representation of clients and potential clients detained at STFRC. In addition to being short-staffed, Ms. Fluharty and her team are unable to arrange expedited telephonic mental health evaluations for clients. In essence, ICE's new written policy places DPBP staff in the untenable position of having to choose between potentially compromising the needs of their clients by following ICE's new written policy, or putting themselves at risk of losing their access to STFRC by providing the legal advice and representation they consider to be in their clients' best interests.

6. DPBP relies exclusively on mental health professionals who are willing to provide services free of charge and must work to accommodate the schedules and logistical needs of those mental health professionals. Given limited staff capacity, Ms. Fluharty is frequently deterred from sacrificing the time required to coordinate telephonic mental health evaluations because ICE routinely fails to approve her requests in time for the evaluations to proceed as scheduled.

7. Having exhausted administrative remedies, Plaintiffs file this lawsuit in a continuing effort to ensure that they can effectively represent the mothers and children detained at STFRC. To this end, Plaintiffs seek a declaratory judgment confirming that ICE's stated policy of requiring pre-approval of telephonic mental health evaluations is contrary to law. They

further seek an injunction prohibiting the continued implementation of this policy and mandating the reinstatement of Ms. Perris's access to STFRC. While this dispute remains unresolved, families with bona fide asylum claims are being deported—placing their lives in jeopardy.

PARTIES

8. Plaintiff Dilley Pro Bono Project is an unincorporated association that provides *pro bono* legal services and undertakes advocacy on behalf of detained mothers and their children at STFRC near the city of Dilley, Frio County, Texas. DPBP is a consortium of four non-profit corporations, the American Immigration Council (Council), the American Immigration Lawyers' Association (AILA), the Catholic Legal Immigration Network, Inc. (CLINIC), and Texas RioGrande Legal Aid (TRLA). TRLA employs several people, including Plaintiff Shalyn Fluharty and Plaintiff Caroline Perris, to provide direct services to mothers and children detained at STFRC.

9. Plaintiff Shalyn Fluharty, the Managing Attorney of DPBP, resides in Dilley, Texas.

10. Plaintiff Caroline Perris, a legal assistant with DPBP, resides in Dilley, Texas. She works under the supervision of and on behalf of Plaintiff Shalyn Fluharty.

11. Defendant U.S. Department of Homeland Security (DHS) is a federal executive agency responsible for, among other things, enforcing federal immigration laws, overseeing lawful immigration to the United States, and conducting screenings of asylum applicants.

12. Defendant U.S. Immigration and Customs Enforcement (ICE) is a component of DHS. ICE is the principal investigative arm of DHS and is charged with criminal and civil enforcement of the immigration laws. ICE's primary duties include the investigation of persons

suspected to have violated the immigration laws and the apprehension, detention, and removal of noncitizens who are unlawfully present in the United States.

13. Defendant John F. Kelly is sued in his official capacity as the Secretary of DHS. In this capacity, he is charged with enforcing and administering the immigration laws. He oversees each of the component agencies within DHS, including ICE, and has ultimate authority over all policies, procedures, and practices relating to ICE facilities. He is responsible for ensuring that all individuals held in ICE custody are detained in accordance with the Constitution and all relevant laws.

14. Defendant Thomas D. Homan is sued in his official capacity as the Acting Director of ICE. In that capacity, he has direct authority over all ICE policies, procedures, and practices relating to ICE facilities, including detention facilities for mothers and their children. He is responsible for ensuring that all individuals held in ICE custody are detained in accordance with the Constitution and all relevant laws.

15. Defendant Daniel A. Bible is sued in his official capacity as the Field Office Director of ICE, San Antonio, Texas. In that capacity, he has direct responsibility for policies, procedures, and practices relating to ICE detention facilities in the Central South Texas Area of Responsibility, including STFRC. He is responsible for ensuring that all individuals held in ICE custody in the Central South Texas Area of Responsibility are detained in accordance with the Constitution and all relevant laws.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1346. This action arises under the U.S. Constitution, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*., and the Administrative Procedure Act (APA), 5

U.S.C. § 701, *et seq*. Defendants have waived sovereign immunity for purposes of this suit pursuant to 5 U.S.C. § 702. The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Defendants DHS and ICE are headquartered in this District.

STATUTORY AND REGULATORY BACKGROUND

18. People fleeing violence in their home countries have a statutory right to seek asylum in the United States. 8 U.S.C. § 1158(a)(1).

19. For many, but not all, families detained at STFRC, ICE has chosen to initiate expedited removal proceedings rather than regular removal proceedings. The first step in pursuing an asylum claim while in expedited removal proceedings is a Credible Fear Interview (CFI).

20. Each week at STFRC, Asylum Officers generally conduct between 100 and 500 CFIs. Asylum-seekers subject to expedited removal are required to pass CFIs with federal asylum officers before they may file formal asylum applications. 8 U.S.C. § 1225(b)(1)(B).

21. Families subject to expedited removal are regularly detained without bond while awaiting their CFIs. 8 C.F.R. § 1235.3(b)(4)(ii). During this time, DPBP frequently has only one day to prepare each family for their CFI.

22. Families who receive positive credible fear determinations are usually released to join relatives or friends within the United States while they pursue their asylum applications.

23. Families who receive negative credible fear determinations may seek review by an Immigration Judge. Review must occur within 24 hours when practicable but no later than 7 days later. 8 C.F.R. § 1003.42(e). The Immigration Judge may affirm or vacate the Asylum

Officer's negative credible fear determination. *Id.* § 1003.42(f). If the Immigration Judge affirms the negative credible fear determination, ICE works quickly to remove the family from the United States.

24. At any time prior to the family's departure from the United States, the Asylum Officer retains discretion to reconsider a negative credible fear determination. 8 C.F.R. § 1208.30(g)(2)(iv)(A) ("The Service . . . may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge.").

25. Congress conferred a statutory right upon each person who is detained and subject to the CFI process to "consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process." INA, 8 U.S.C. § 1225(b)(1)(B)(iv); *see also* 8 C.F.R. § 1235.3(b)(4)(i)(B) ("right to consult"). The U.S. District Court for the District of Columbia has construed this statutory right of consultation to attach before a credible fear interview takes place. *Am. Immigration Lawyers Ass'n v. Reno*, 18 F. Supp. 2d 38, 54 (D.D.C. 1998), *aff'd*, 199 F.3d 1352 (D.C. Cir. 2000).

26. To implement the INA, DHS regulations provide that "[p]rior to the [CFI], the alien shall be given time to contact and consult with any person or persons of his or her choosing. Such consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained . . . ." 8 C.F.R. § 1235.3(b)(4)(ii).

27. Consultation policies and procedures appear in ICE's "Standard Operating Procedures [for] Legal Access and Legal Visitation" at Family Residential Centers (FRCs), which are the facilities where mothers and children seeking asylum are detained. (Exhibit A.)

This document states, in relevant part, that FRCs will: "permit legal visitation seven days a week;" "allow each resident to meet privately with current or prospective legal representatives and their legal assistants;" ensure that conversations during legal visits are "confidential;" and "maintain a land-line telephone in each legal visitation room for use by attorneys and residents for legal visitation purposes relevant only to the specific visit." Any visitor who violates any visitation rule may face corrective action including visitation restrictions and/or suspension of future visitation privileges. However, the document also requires that these rules be distributed in writing and posted in specified locations.

28. Consultation policies and procedures also appear in ICE's "Residential Standard [for] Visitation." (Exhibit B.) This document states, in relevant part:

> [E]ach facility shall develop procedures that liberally allow an opportunity for consultation visitation, in order to ensure compliance with statutory and regulatory requirements and to prevent delay . . . . Given the time constraints, consultation by mail will generally not prove viable.
>
> The facility shall facilitate consultation visitation by telephone and face-to-face, and staff shall be sensitive to individual circumstances when resolving consultation-related issues.
>
> Consultation visitation shall be allowed during legal visitation hours and during general visitation hours; however, confidentiality shall be ensured only during legal visitation hours.

Id. ¶ 5.8(V)(11)(b) (available at https://www.ice.gov/detention-standards/family-residential) (last visited May 31, 2017).

29. Consultation policies and procedures also appear in ICE's "Residential Standard [for] Telephone Access." (Exhibit C.) This standard, which is separate from the visitation standard, requires facilities to provide "direct or free" telephone calls to "[l]egal representatives, to obtain legal representation, or for consultation, when a resident is subject to Expedited Removal." *Id.* ¶ 5.7(V)(5) (available at https://www.ice.gov/detention-standards/family-

residential) (last visited May 31, 2017). The standard further requires that restrictions on direct or free calls "must not unduly limit a resident's attempt to obtain legal representation." *Id.* The only delays in access to free telephone calls contemplated by the telephone access standard are when the calls are "limited by technology," and such technology-related delays cannot exceed 24 hours. *Id.* ¶ 5.7(V)(5)(a)-(b).

30. Policies and practices for in-person medical and/or mental health evaluations appear in ICE's "Residential Standard [for] Medical Care." (Exhibit D.) This document states, in relevant part:

> **Examinations by Independent Medical Service Providers and Experts**
>
> On occasion, medical and/or mental health examinations by a practitioner or expert not associated with [ICE] or the facility may provide a resident with information useful in administrative proceedings before the Executive Office for Immigration Review and [ICE].
>
> If a resident seeks an independent medical or mental health examination, the resident or his or her legal representative shall submit to [ICE] a written request that details the reasons for such an examination. [ICE] shall approve the examination, as long as it would not present an unreasonable security risk. If a request is denied, [ICE] shall advise the requester in writing of the rationale.
>
> The facility shall provide a location for the examination but no medical equipment or supplies, and the examination must be arranged and conducted in a manner consistent with security and good order.

Id. ¶ 4.3(V)(26) (available at https://www.ice.gov/detention-standards/family-residential) (last visited May 31, 2017). By stating that "[t]he facility shall provide a location for the examination but no medical equipment or supplies," ICE's "Residential Standard [for] Medical Care" makes clear that its pre-approval requirement for examinations applies only to in-person examinations.

31. To implement ¶ 4.3(V)(26) of its medical care standard, ICE promulgated a form, effective on January 27, 2016, entitled "Independent Medical Service Provider and Expert Request." (Exhibit E.) This document states, in relevant part:

> **Pre-Screening Requirements for Designation of Independent Medical Service Providers and Experts**
>
> For safety and security of Family Residential Center (FRC) residents and staff, FRCs will require all prospective Legal **Visitors** (Independent Medical Service Provider or Expert) to pass pre-clearance/record checks seventy-two (72) hours prior to the scheduled **visit**. The pre-clearance/record checks will include, but not [sic] limited to: identity verification, current employment or educational status, certification of medical license, and arrest and criminal history, underlying the applicant's request for medical **visitor** designation.

Id. (emphasis added).

32. By referring to "visitors" and the "scheduled visit," the Independent Medical Service Provider and Expert Request makes clear that it applies only to in-person medical visitors. As used throughout ICE's "Standard Operating Procedures [for] Legal Access and Legal Visitation," and ICE's "Residential Standard [for] Visitation," the terms "visit" and "visitor" clearly refer to in-person visits and visitors. For example, the "Standard Operating Procedures [for] Legal Access and Legal Visitation" regulate "visiting areas" and "Visitor's Food and Drink" and distinguish between telephone communications and visits. (Exhibit A III.D-F ("Legal representatives and assistants may telephone the facility in advance of a visit . . . .").) The requirements set forth in the Independent Medical Service Provider and Expert Request form are limited to in-person "visits" by individuals licensed or otherwise authorized by a state to provide medical or mental health care services.

33. The Family Residential Standards described in the foregoing paragraphs, many of which are located on ICE's website at https://www.ice.gov/detention-standards/family-residential (last visited May 31, 2017), are publicly available. The Standards described above generally begin with a "Purpose and Scope" that describes the rights and benefits that the Standard creates for detainees. For example, ICE's "Residential Standard [for] Visitation" (Exhibit B) begins with the statement that "Residents will be able to maintain ties through

visitation with their families, the community, legal representatives, and consular officials, within the constraints of safety and good order."

34. No written ICE policy promulgated before May 12, 2017 requires prior approval for mental health evaluations that are conducted telephonically.

STATEMENT OF FACTS

A. The South Texas Family Residential Center

35. In December 2014, ICE and Corrections Corporation of America, a for-profit corporation that operates private prisons and that rebranded as "CoreCivic" in October 2016, opened the South Texas Family Residential Center located in Frio County near the town of Dilley, Texas. Unlike most ICE detention facilities, STFRC was not originally constructed to serve as an adult prison or jail. Instead, STFRC was specifically designed and constructed by the Corrections Corporation of America, following ICE specifications, for the sole purpose of detaining mothers and their minor children. STFRC detains this population in a secure facility, behind tall fences monitored by flood lights and surveillance cameras. After visiting STFRC, Member of Congress Judy Chu stated that it "looked so much like the Japanese-American internment camps of World War II." In December 2016, a state District Court in Travis County, Texas, ordered the Texas Department of Family and Protective Services to withdraw a rule permitting STFRC to be licensed as a child care facility because such a rule violates Texas statutes and "runs counter to the general objectives of the Texas Human Resources Code."

36. As of October 2016, CoreCivic did not dispute that no mother or child has ever attempted to escape from STFRC.

37. By statute and regulation, detention at STFRC is not supposed to be punitive. ICE's authority to detain families at STFRC does not arise from any criminal statute and is not

derived from the enforcement of any sentence for a crime. Instead, the mothers and children held at STFRC are civil detainees who are facing potential removal from the United States through civil immigration enforcement proceedings. ICE holds these mothers and children in detention centers through an exercise of its discretion.

38. At STFRC, ICE has the capacity to detain up to 2,400 mothers and children, although the actual population usually varies between 200 and 1,500 detainees. The cost to ICE to maintain STFRC does not fluctuate with the population. ICE pays Corrections Corporation of America/CoreCivic the same amount regardless of how many mothers and children are detained at STFRC.

39. Most families detained at STFRC consist of a mother and one child.

40. During 2016, ICE detained approximately 11,302 children at STFRC with a median age just under 6.

41. Almost all STFRC detainees are from El Salvador, Guatemala, and Honduras, countries with some of the highest violent crime rates in the world.

42. The overwhelming majority of STFRC detainees served by DPBP have experienced severe forms of trauma, including child abuse, rape, incest, domestic violence, and the persecution of their loved ones.

43. Most STFRC detainees communicate only in Spanish or in an indigenous language.

B. The Dilley Pro Bono Project

44. Since STFRC began detaining families in December 2014, various non-profit corporations have organized and operated a *pro bono* legal assistance project that eventually became known as the Dilley Pro Bono Project.

45. The federal government has never created a public defender system for people in removal proceedings. Families and individuals facing removal usually have extremely limited, if any, resources; generally do not speak English; and, if detained at STFRC or many other similar centers, are in remote locations with few lawyers nearby. Accordingly, DPBP, which offers free, local legal services in Spanish, plays an indispensable role in ensuring that the families detained at STFRC understand and are adequately prepared for the various stages of their immigration proceedings that occur while they are in detention.

46. In February 2017, DPBP's staff consisted of two full-time attorneys and four full-time legal assistants. DPBP staff also supervised roughly eight to twenty rotating volunteers who were present on-site at STFRC each day. DPBP staff are bilingual and specially trained on the nuances of expedited removal proceedings and asylum law, administration of DPBP's electronic client case management system, and DPBP's operating procedures. Accordingly, DPBP staff are not easily replaced. The absence of any of the six full-time staff imposes a severe strain on the remaining providers.

47. DPBP provides numerous legal services to STFRC detainees prior to their CFIs, including:

a. group legal meetings orienting families to credible fear proceedings;

b. asserting fear on behalf of clients who wish to proceed with the CFI process;

c. securing mental health evaluations and other forms of evidence gathering;

d. interview preparation;

e. requesting appropriate language access during CFIs;

f. requesting release for clients who have an urgent need for medical attention; and

g. asserting claims for U.S. citizenship, legal permanent residence, or other forms of status that constitute a statutory bar to an individual's placement in expedited removal proceedings.

48. DPBP provides numerous legal services to STFRC detainees subsequent to the issuance of a positive credible fear determination, including:

a. motions for custody redetermination;

b. requests for release without the condition of an ankle monitor;

c. representation during master calendar hearings; and

d. orientation regarding obligations upon release from detention.

49. DPBP provides numerous legal services to STFRC detainees subsequent to issuance of a negative credible fear determination, including:

a. advising on legal options;

b. evidence gathering;

c. document drafting and filing;

d. requests for reconsideration or re-interview;

e. accompaniment and assistance before the Immigration Judge during a negative credible fear review; and

f. arranging for safe return to the extent possible and necessary.

50. To the extent that DPBP staff are able to arrange mental health evaluations for particular clients, they must generally do so shortly after the need for such an evaluation is identified. This is because of (i) the short time frames applicable to DPBP clients' cases, and (ii) the limited availability of *pro bono* mental health professionals, who frequently can offer telephone appointments, but only on short notice.

51. The May 12, 2017 policy requiring ICE approval for telephonic mental health evaluations fails to specify any deadline by which ICE must respond to such a request. In Plaintiffs' experience, ICE can take days or weeks to approve an "Independent Medical Service Provider and Expert Request." (Exhibit E.) That is in part because a single ICE officer is

responsible for responding to such requests; if that officer is unavailable, approval can be severely delayed.

52. The legal services provided by DPBP staff, including attorney-client and legal assistant-client meetings with DPBP clients, are critical to ensuring effective representation of individuals detained pending CFIs or other immigration proceedings. DPBP has provided legal consultation services to detainees according to ICE's rules without significant incident since December 2014. To the extent that misunderstandings have arisen between ICE and DPBP, they have typically been resolved by informal discussion during periodic liaison meetings among stakeholders.

C. Revocation of Caroline Perris's License

53. On January 15, 2017, DPBP participating organization TRLA hired Plaintiff Caroline Perris as a full-time employee and assigned her to work exclusively for DPBP. Ms. Perris is fluent in English and Spanish.

54. TRLA pays Ms. Perris an annual salary specifically to work as a full-time legal assistant at STFRC under the supervision of DPBP Managing Attorney Shalyn Fluharty. TRLA has paid Ms. Perris the same salary since her hire date.

55. On January 15, 2017, ICE granted Ms. Perris a "license," as defined in 5 U.S.C. § 551(8), to provide legal services within STFRC.

56. Between January 15 and March 3, 2017, Ms. Perris consistently worked long hours providing legal services at STFRC without incident.

57. At 10:45 a.m. on March 3, 2017, DHS's Asylum Office informed Ms. Fluharty that it would not re-consider a negative credible fear determination issued for a DPBP client. Ms. Fluharty immediately advised Ms. Perris of the case outcome given Ms. Perris's prior work with

this particular client. Ms. Perris, working under Ms. Fluharty's supervision, decided that a telephonic mental health evaluation would benefit the client.

58. Ms. Perris took immediate steps to arrange the mental health evaluation because ICE's written policies unequivocally provide that she and her client are not only allowed to telephone anyone for matters relevant to the representation, but they are allowed to do so confidentially. (Exhibit A ¶¶ III.C.2., III.F.1, III.L.1; Exhibit C.)

59. As of March 3, 2017, ICE had no written policy requiring approval of a telephonic mental health evaluation prior to conducting it.

60. Even so, to avoid needless controversy, Ms. Perris submitted an evaluation request form (as in Exhibit E) to ICE several hours prior to the scheduled evaluation.

61. Ms. Perris then facilitated a telephonic mental health evaluation of the DPBP client in order to gather evidence to support a request for reconsideration of the DPBP client's initial negative CFI determination by the Asylum Office.

62. The physician who conducted the evaluation facilitated by Ms. Perris is Dr. Craig Katz, a professor of medicine at New York's Icahn School of Medicine at Mount Sinai Hospital in New York.

63. The Asylum Office relied on Dr. Katz's evaluation to reverse its decision and release Ms. Perris's client and her child from detention, rather than deporting them.

64. ICE did not respond to Ms. Perris's evaluation request for Dr. Katz until several weeks later, when it approved the request.

65. On March 17, 2017, ICE permanently revoked Caroline Perris's right to visit STFRC based on her conduct on March 3, as described above. (Exhibit F.)

66. DPBP and Ms. Perris submitted a detailed appeal of ICE's revocation.

67. DPBP held several discussions with ICE's Chief Counsel in attempts to resolve this dispute informally.

68. On May 12, 2017, in response to DPBP's request that ICE reinstate Ms. Perris's access, ICE stated for the first time in writing that "a request for a telephonic medical evaluation [must be] made in advance of the evaluation, and the request [must be] approved prior to the evaluation taking place." (Exhibit G.) ICE cited this newly-announced rule as the justification for its March 3, 2017 decision prohibiting Ms. Perris from visiting STFRC.

69. ICE's new written policy requiring pre-clearance for telephonic mental health evaluations is arbitrary and capricious. On information and belief, ICE asserts a security justification for requiring pre-clearance for in-person visits because they involve the physician physically entering STFRC and may require the physician to bring medical equipment or supplies into STFRC. However, a telephone call involves no physical entry by the physician. Accordingly, no similar security justification can exist for pre-screening telephone conversations with physicians.

70. As set forth above, DHS's regulations and ICE's policies elsewhere allow detainees confidential access to telephones to call any person for purposes relevant to their cases. Indeed, ICE has installed land-line telephones in each attorney visitation room. These land-line telephones may connect to any international or U.S.-based local, long-distance, or toll-free telephone number. ICE does not require pre-approval for attorneys to make telephone calls from these phones to individuals who are not physicians, and the telephone system has no technological limitations that would make such pre-approval necessary.

D. Injuries Caused by ICE's Unlawful Policy, its Retroactive Enforcement of that Policy, and its Suspension of Ms. Perris

71. ICE's implementation and enforcement of an unlawful policy, and its resulting exclusion of Ms. Perris from STFRC, interferes with First Amendment and statutory rights of association and consultation that exist between detained immigrants and *pro bono* legal services providers, including Plaintiffs.

72. *First*, ICE's unjustified suspension of Ms. Perris has caused a shortage of staffing at DPBP, rendering Ms. Fluharty and her team unable to complete crucial tasks for DPBP's clients and causing the level of service provided to DPBP's clients to decline. In Ms. Perris's absence, DPBP clients who (in DPBP's judgment) required the attendance of a legal representative at their interviews with the Asylum Office have been forced to attend alone. At least one client was removed because DPBP was unable to submit a motion to reconsider her negative credible fear determination as a result of the shortage in staffing. The remaining members of DPBP's team are required to work more hours to make up for the staffing shortage, yet remain unable to complete critical tasks for each client.

73. *Second*, as a result of ICE's illegal policy requiring prior approval for telephonic mental health evaluations (Exhibit G), DPBP attorneys must choose between putting themselves at risk of having their visitation rights permanently revoked by providing the legal assistance and advice they believe is in the best interests of their clients, including expedited confidential telephonic mental health evaluations—or potentially compromising their representation of their clients by seeking and waiting for prior approval.

74. *Third*, as a result of ICE's illegal policy requiring prior approval for all telephonic mental health evaluations (Exhibit G), DPBP attorneys are deterred and chilled from exercising their First Amendment right to provide the legal assistance they believe is required. That is

because DPBP attorneys recognize that ICE will not approve requests for mental health evaluations on short notice, and by the time ICE approves any given request, a detainee's CFI or related proceeding will likely have taken place. DPBP attorneys are reluctant to expend scarce resources seeking approval for expedited telephonic mental health evaluations that are unlikely to occur.

75. *Fourth*, because Ms. Perris's visitation rights were revoked on March 17, Ms. Perris has been prevented from associating with clients who sought her assistance before then; and Ms. Fluharty's association with those clients has been hindered by the absence of Ms. Perris.

76. ICE's revocation of Ms. Perris's visitation rights has caused DPBP partner TRLA to waste valuable resources every day that Ms. Perris, who is paid as a full-time employee, is unable to perform her contracted duties through no fault of her own, but rather due to ICE's unjustified exclusion of Ms. Perris from STFRC.

77. Plaintiffs incorporate all attached exhibits in full and for all purposes pursuant to FED. R. CIV. P. 10(c).

INJUNCTIVE RELIEF

78. Plaintiffs are entitled to a preliminary and permanent injunction. Defendants have acted and threaten to act to deprive Plaintiffs and those they seek to represent of their constitutional and statutory rights. Plaintiffs have suffered irreparable injuries and the loss of fundamental associational rights and have been and will continue to be subjected to serious risks of these same irreparable harms as the result of ICE's actions. Plaintiffs have no plain, adequate, or speedy remedy at law.

CAUSES OF ACTION

COUNT ONE

(Violation of Plaintiffs' First Amendment Rights of Association)

79. The First Amendment of the U.S. Constitution guarantees Plaintiffs the right to communicate and associate with their clients and prospective clients who are seeking representation, to inform them about their legal rights, to discuss the possibility of legal representation, and to assist them with their legal claims in a confidential setting.

80. ICE's decision to revoke Ms. Perris's visitation rights violates Plaintiffs' First Amendment rights to communicate and associate with their clients.

81. ICE's actions have caused Plaintiffs to suffer injuries in fact. DPBP is the only free legal services provider for mothers and children detained at STFRC. ICE's actions undermine DPBP's mission to provide legal services for families detained at STFRC, and harm Plaintiffs by interfering with their First Amendment rights to associate and communicate with their clients and potential clients seeking representation.

82. Defendants' actions also violate the First Amendment because they burden the constitutionally protected speech and association rights of third parties, including clients and potential clients of Plaintiffs, who are deprived of the opportunity to associate and communicate with DPBP.

83. ICE's actions are the direct cause of Plaintiffs' injuries.

84. As a result of Defendants' unconstitutional actions, Plaintiffs are entitled to the requested relief.

COUNT TWO

(Violation of Administrative Procedure Act, 5 U.S.C. § 706)

85. The Administrative Procedure Act empowers this Court to issue all injunctive relief necessary to secure ICE's compliance with treaties, the Constitution, statutes, regulations, and ICE's own policies. 5 U.S.C. § 706(2); *Montilla v. INS*, 926 F.2d 162, 163-64 (2d Cir. 1991).

86. ICE has taken the following final agency actions:

a. ICE adopted an unlawful new written policy that requires ICE approval prior to any telephonic mental health evaluation sought by legal counsel for use in legal proceedings;

b. ICE determined that Caroline Perris violated ICE policies by not seeking approval before coordinating a telephonic mental health evaluation of a detainee in connection with a request for reconsideration of that detainee's negative CFI determination by the Asylum Office; and

c. ICE excluded Ms. Perris from STFRC by suspending, and refusing to reinstate, her visitation rights.

87. ICE's final agency actions violate the Constitution, statutes, regulations, and policies referenced above because:

a. The First Amendment to the U.S. Constitution guarantees to Plaintiffs the right to communicate and associate with detainees;

b. Statutes, ICE regulations, and written ICE policies guarantee the right of in-person association between detainees and lawyers or legal assistants, subject to revocation only for violation of published ICE rules;

c. The text of ICE's own prior policies limits the prior approval requirement to *in-person* mental health examinations conducted by a professional on site at a detention facility;

d. It is arbitrary to require, and would be arbitrary to deny, a request for telephonic mental health evaluation, because ICE's own rules permit detainees and their lawyers to call anyone they choose for case-related purposes; and

e. To the extent that ICE's policies require pre-approval of, permit denial of, or practically prevent telephonic mental health evaluations, any such policy violates 8 U.S.C. § 1225(b)(1)(B)(iv) and 8 C.F.R. § 1235.3(b)(4)(ii), which guarantee detainees the right to consult any person they choose as they prepare for credible fear proceedings.

88. ICE's final agency actions have caused Plaintiffs to suffer injuries in fact. In particular, those actions have undermined DPBP's mission to provide legal services for families detained at STFRC, and have harmed Plaintiffs by interfering with their First Amendment rights to associate with the mothers and children that they aim to serve.

89. Additionally, Plaintiffs are permitted to vindicate the rights of clients and prospective clients of DPBP who are not able to consult with the sole provider of free legal services at STFRC.

90. The interests that Plaintiffs seek to protect are within the zone of interests regulated by the applicable provisions of the Constitution and the Immigration and Nationality Act.

91. ICE's final agency actions are the direct cause of Plaintiffs' injuries.

92. Plaintiffs' requested relief would redress Plaintiffs' injuries.

93. Plaintiffs have no adequate remedy at law to redress the wrongs suffered as set forth in this Complaint.

PRAYER FOR RELIEF

94. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, policies, and practices of Defendants, as alleged herein, unless Plaintiffs are granted the relief they request. The need for relief is critical because the rights at issue are paramount under the U.S. Constitution and the laws of the United States.

WHEREFORE, Plaintiffs pray that the Court grant them the following relief:

(a) pursuant to D.D.C. Local Rule 7(n)(1), order that ICE immediately produce the complete administrative record showing all documents that ICE relies upon to defend its actions challenged in this lawsuit, including without limitation all documents related to:

(1) suspension of Caroline Perris from STFRC;

(2) changes in ICE's STFRC consultation requirements since January 2017; and

(3) reasons for changes in such consultation requirements.

(b) an order that ICE immediately reinstate Caroline Perris's STFRC visitation license;

(c) a preliminary and permanent injunction prohibiting ICE from enforcing its May 12, 2017 written policy concerning pre-approval for telephonic mental health evaluations;

(d) a preliminary and permanent injunction prohibiting ICE from issuing unnecessary restrictions that significantly interfere with in-person association between detainees and their lawyers or legal assistants;

(e) an order that ICE pay Plaintiffs' reasonable litigation costs and attorney's fees; and

(f) all other relief that the Court deems just and proper to ensure that ICE has in place policies, practices, and procedures preserving Plaintiffs' access to clients and prospective clients seeking representation at STFRC.

June 1, 2017

Respectfully submitted,

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U.S. Immigration and Customs Enforcement

Standard Operating Procedures (SOP)

Legal Access and Legal Visitation

Document Number:
Federal Enterprise Architecture Number: 301-112-002b
Issue Date:

I. Background

A. The operating procedures described herein establish minimum legal access and legal visitation standards applicable to all Immigration and Customs Enforcement (ICE) Family Residential Centers (FRC) that are active and operational as of the above effective date. In the event of an emergency that threatens the safety or security of FRC residents and/or staff, the ICE/Facility Administrator may temporarily suspend these standard operating procedures (SOP), in whole or in part. Any violation of the legal access and visitation rules by a visitor may result in corrective action, including suspension of access to the facility. Any criminal violations may lead to criminal arrest and prosecution.

II. Definitions - The following definitions apply for purposes of this SOP only:

A. Attorney: Any person who is eligible to practice law in, and is a member in good standing of the bar, of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him/her in the practice of law. 8 C.F.R. § 1.2.

B. Interpreter: A person who provides an oral interpretation or written translation, from one language and converts to another language while retaining the same meaning.

C. **Legal Assistant:** An individual (other than an interpreter) who, working under the direction and supervision of an Attorney or Legal Representative, assists with group presentations and in representing individual residents. Legal assistants may interview residents, assist residents in completing forms, and deliver papers to residents without the Attorney or Legal Representative being present.

D. **Independent Medical Expert:** An individual who is licensed or otherwise authorized by a state to provide medical or mental health care services, including but not limited to physicians, registered professional nurses, and licensed social workers. Such individuals are not permitted under this SOP to provide medical or mental health care services to residents, but may be permitted to evaluate individual residents for purposes of preparing expert reports.

E. **Legal Representative:** Any person who is legally authorized to represent another, including accredited law school students under the direct supervision of a faculty member, licensed attorney, or accredited representative, and accredited law school graduates not yet admitted to a bar; "reputable individuals"; accredited representatives; accredited officials; and attorneys outside the United States. *See* 8 C.F.R. § 292.1.

III. Procedures –

A. Notification of Visitation Rules and Hours

Every FRC will do the following, to promote access and availability of visitation rules and procedures:

1. Provide existing and newly admitted residents with a resident handbook (or equivalent) upon admission, which shall include information regarding FRC Visitation Rules and Hours in Spanish and English;

2. Post Spanish and English Visitation Rules and Hours conspicuously in common resident areas and housing units; and

3. Ensure easy public access to Visitation Rules and Hours in both Spanish and English, by conspicuous postings in the visitor waiting areas, in writing upon request, and telephonically via live voice or recorded message, both in Spanish and English.

B. Visitor Logs

1. For record-keeping and verification purposes, every FRC will maintain separate logs for general visitors and legal visitors.

C. Access to Communication Devices

1. FRCs will maintain a land-line telephone in each legal visitation room for use by attorneys and residents for legal visitation purposes relevant only to the specific visit.

2. Use of personal electronic devices (e.g., cell phones/ smart phones, and other Wi-Fi/cellular enabled devices) is generally prohibited. The use of laptops, Wi-Fi and hot spot devices, and tablets are, however, permitted in the visitation area. At the discretion of the ICE Facility Administrator, limited cell phones/smart phones may be permitted if functioning land-line telephones become unavailable.

D. Visiting Room Conditions

1. The facility's visiting areas will be appropriately furnished and arranged, and as comfortable and pleasant as practicable, including safe and appropriate accommodations for children.

2. Monitored care of children is available upon request as explained in the section below entitled "Legal Visitation Privacy."

3. As practicable, space should be provided outside of the immediate visiting areas for the secure storage of visitors' coats, handbags, and other personal items.

4. The Facility Administrator will provide adequate supervision of all visiting areas. The visiting area staff will ensure that all visits are conducted in a quiet, orderly, and dignified manner.

E. Visitor's Food and Drink

1. Visitors will be permitted to bring water and an appropriate amount of snacks for personal consumption.

2. FRCs will designate specific areas of the facility in which food and beverages may be consumed, generally inside the visitation area.

3. Food and beverages may not be shared with or otherwise provided to the residents.

4. All food and beverages will be subject to search upon entering the FRC.

5. FRC staff will ensure that food and beverage vending machines are stocked appropriately.

F. Visits by Legal Representatives and Legal Assistants

1. Regarding Legal Visits, FRCs will ensure that local rules allow each resident to meet privately with current or prospective legal representatives and their legal assistants

2. A legal visitation request, using the appropriate facility form (e.g., Form 16-101A) , should be completed and submitted to the facility at least twenty four (24) hours prior to the requested visit time to ensure proper scheduling of a private meeting room.

   - The legal visitation request form must identify the resident to be visited.

   - Legal representatives and assistants are not required to provide, and FRC staff shall not inquire into a resident's A-number as a condition of visiting; FRC staff will make a good-faith effort to locate a resident if provided with sufficient information about the resident.

3. Legal representatives and assistants may telephone the facility in advance of a visit, to determine the custody status of a particular individual. These calls may be responded to by facility staff or forwarded to a designated Enforcement and Removal Operations (ERO) officer within the facility or to the Area of Responsibility's (AOR) ERO Office.

4. FRCs will not reject qualified attorneys or pre-cleared legal visitors who failed to provide 24-hours advanced notice, but failure to provide advanced notice may result in the following:

   - Legal Visitors who appear without 24-hour notice will be informed that their visit may be accommodated subject to space limitations, and only

following the facilitation of legal visits of those who provided 24-hours advanced notice.

- Legal Visitors who appear without 24-hour advance notice may be placed in a queue or an on-call list to replace no-shows or cancellations from Legal Visitors who provided advanced notice.

- Inability to identify or locate residents in a timely manner.

Designation of Legal Access Communications Liaison Officer and Staff Training

5. FRCs will designate a Legal Access Communications Liaison Officer to administer legal access policies and procedures discussed in this SOP, and facilitate legal access related communication between residents and the public, including legal visitors.

6. FRC personnel will be required to complete Legal Access detention standards training and refamiliarize themselves with the provisions of this SOP at least once each fiscal year to ensure consistent and fair application of legal visitation rules.

Form G-28 Required for Attorney-Client Meetings

7. Attorneys representing residents on legal matters unrelated to immigration are not required to complete a Form G-28. In addition, Form G-28 is not required for pre-representation sessions provided by attorneys or legal representative.

8. If an attorney-client relationship has been established, the legal representative will complete and submit a Form G-28. This requirement applies to both visitation with individual residents and to Attorney/Client Group Legal Meetings. Blank Forms G-28 will be available in the legal visitation reception area. Legal representatives must also furnish completed forms to ICE/ERO.

9. Each completed Form G-28 becomes a permanent part of the resident's administrative file, and it remains valid until ICE/ERO receives written notice of the relationship's termination from the resident or the legal representative.

G. Pre-Screening Requirement For Designation of Legal Visitors and Independent Medical Experts

1. For the safety and security of FRC residents and staff, FRCs will require, 72 hours prior to the initial visit, all prospective visitors to pass pre-clearance/ record checks; the pre-clearance/records checks will include, but is not limited to, identity verification, current employment or educational status, arrest and criminal history, and verification of training, certification, and/ or skills underlying the applicant's request for legal/medical visitor designation.

2. Licensed attorneys may satisfy the pre-clearance/records check requirement with proof of identity and proof of admission and good standing in any state bar. Licensed attorneys satisfying these requirements will not be required to undergo the broader screening referenced above.

3. The ERO FOD, in the AOR of the relevant FRC, is designated as the ultimate deciding official on applications for Legal Visitor designation.

H. Legal Visitation Hours

1. FRCs will permit legal visitation seven (7) days a week, including holidays, for a minimum of eight (8) hours per day on regular business days, and a minimum of four (4) hours per day on weekends and holidays.

2. Notwithstanding the regular visitation hours, FRC and ICE staff maintains discretion to extend or terminate legal visits at the end of the allotted time.

3. FRCs will provide notification of the rules and hours for legal visitation, as specified above, and conspicuously post this information in the common areas and visiting areas for general and legal visitors.

4. On regular business days, legal visitations may proceed through a scheduled meal period. If residents miss their scheduled meal as a result of a legal visit, FRC staff will ensure that a meal is provided upon conclusion of the conflicting legal visit.

I. Categories of Designated Visitors

Subject to the restrictions herein, individuals in the following categories are considered Legal Visitors:

- Attorneys and Legal Representatives

- Legal Assistants

1. Upon presentation of a letter of authorization from the legal representative under whose supervision the legal assistant is working, an unaccompanied legal assistant may meet with a resident during legal visitation hours. The letter must state that the named legal assistant is working on behalf of the supervising legal representative for the purpose of meeting with the FRC resident(s).

- Interpreters

1. Interpreters will be permitted to accompany legal representatives and legal assistants on legal visits, subject to visitor identification and search procedures detailed in the section above titled "Pre-Screening Requirement For Designation of Legal Visitors" and the section below titled "Necessary Documentation to Prove Legal Representative and Legal Assistant Status."

- Independent Medical Experts

1. Upon presentation of a written request by a legal representative under whose supervision the medical expert is working, and approval by the ERO Juvenile and Family Residential Management Unit, a medical or mental health professional will be permitted to conduct an independent medical or mental health examination of a specified resident. (Note: Such individuals are not permitted under this SOP to provide medical or mental health care services to residents.). The written request must identify the individual resident to be examined and the purpose of such examination. Neither ICE nor the facility may assume any cost for the examination.

- Messengers

1. Messengers, who are not legal representatives or legal assistants, will be permitted to deliver documents to and from the facility, but not to visit residents.

J. Necessary Documentation to Prove Legal Representative and Legal Assistant Status

1. Prior to each visit, all legal representatives and assistants will be required to provide identification. State bar cards are preferred. Attorneys who are members of a state bar that do not provide bar cards are required to present other documentation that verifies bar membership. If such documentation is not readily available to attorneys licensed in a particular state, the person will be required to report where he or she is licensed as an attorney and how that fact may be verified.

2. Subject to verification, law students must have a government-issued identification card *and* memorandum on letterhead from the supervising attorney in good bar standing and membership acknowledging that the law student is acting as a representative of the supervising attorney.

3. FRC and ICE staff may not inquire into the subject matter of any legal visit with the legal representative and legal assistants.

4. Legal representatives and assistants are subject to a search, at any time, of his/her person and belongings, pursuant to a reasonable and articulable basis, for the purpose of ascertaining the presence of contraband.

K. Pre-Representation Meetings

1. During regular legal visitation hours, each FRC will permit residents to meet with prospective legal representatives. Each FRC will document "pre-representation meetings" in the logbook for legal visitation. To the extent that prospective meetings are "pre-representational," no attorney-client relationship exists, thus legal service providers need not complete a Form G-28 to state that they are legal representatives of the resident.

L. Legal Visitation Privacy

1. The substance of conversations during legal visits between legal representatives or assistants and a resident are confidential, and will not be subject to auditory supervision by FRC or ICE staff.

2. FRC and ICE staff will not be present in the legal visitation room unless the legal representative or assistant requests the presence of staff; however, staff may observe the visit through a window or camera, and only to the extent necessary to maintain security.

3. If the legal representative requests to meet with a resident in a general visitor or other alternate visiting room, the request should be accommodated if practicable. Such meetings will be afforded privacy but only to the extent practical under the circumstances.

4. Due to the presence of children and the requirement to provide for attorney-client visitation, visitation areas will be constructed in a manner that allows for parents to view the activities of their children within the visitation area. Furthermore, monitored care for children is available by staff at all FRCs should parents opt to use this amenity.

5. Legal visitors may occupy a meeting room for successive resident client visits but only if any other attorney is not waiting. When there are attorneys waiting, the initial attorney may return to the queue and wait for an attorney client space to become available so as to meet with more clients.

6. FRC staff are generally prohibited from holding a room for a legal representative who leaves the FRC premises. Exceptions will be considered and decided by the Legal Access Communications Liaison Officer. Legal representatives who leave the facility and return at a later time may be placed back in queue should all rooms be filled with other attorneys and residents.

M. Dedicated Workspace

1. Recognizing the unique nature of FRCs, the vulnerability of the resident population: families and juveniles, and other unique qualities of families awaiting immigration case processing, FRCs will reasonably provide registered pro-bono legal representatives with a dedicated workspace for use by the attorneys and legal representatives, and their legal assistants and interpreters, in the representation of the FRC residents. Prior to using this workspace and equipment, the legal representative will be required to sign specific user agreements, which may permit, in the discretion of the FRC, for limited pre-cleared personal office equipment in the workspace.

2. Provisions for copy services for legal representatives will be instituted providing there is no cost to the government.

N. Materials Provided to Residents by Legal Representatives

1. FRCs will allow residents and legal representatives to exchange documents that are relevant for legal representation purposes. .
2. Legal representatives may provide one (1) business card per resident/client.
3. Written material provided by a legal representative to a resident during a legal visit may be inspected by an FRC staff, but not read.
4. Residents are entitled to retain legal material received for their personal use.
5. Quantities of blank forms or self-help legal material in excess of those required for personal use may be held for the resident with his or her stored property. The resident will be permitted access to these documents, through the established avenues of communication.

O. Resident Access to Personal Medical Records

1. Any FRC resident may, at any time, request access to his/ her medical records that are maintained at the FRC, by submitting a medical records request form and a signed HIPAA-compliant waiver to a designated FRC staff.
2. The medical request and HIPAA forms shall be available in common areas.
3. Upon receipt of the properly completed request, the FRC staff will generally produce the medical records within five (5) business days of the receipt of the request.
4. Legal representatives and former residents may use the FOIA process to request medical records.

P. Request for Identity Documents

1. A copy of the resident's identity documents will be provided to the resident upon request. The facility and/or ICE will maintain records of all documents provided to the requesting resident and/or their attorney of record.

Q. Communication with Residents

1. FRC and ICE staff will utilize contracted interpreters and translators, when necessary, to facilitate communication between staff and the residents.

2. ICE Contracted interpreters and translators will be strictly prohibited from facilitating any legal communication between a legal representative and a resident. This strict prohibition protects all parties from potential conflicts of interest, impermissible disclosures, and any ethical issues that may arise pertaining to attorney-client privilege.

3. Interpreters accompanied by visiting attorneys are recognized as "legal visitors," and are subject to security clearance, as described above.

R. Attorney/Client Group Legal Meetings

1. Upon the request of a legal representative or assistant, the ICE Facility Administrator may permit a confidential meeting (with no staff present) involving the requester and two (2) or more residents. This may be for various purposes: pre-representational, representational, removal-related, etc. Such requests should be made to the Legal Access Communications Liaison. FRCs should grant such requests to the greatest extent practicable. The ICE Facility Administrator will limit resident attendance according to the practical concerns of the facility, or the security concerns associated with the meeting in question. Attorney/Client Group Legal Meetings are distinct from Legal Rights Group Presentations, which are governed by ICE Family Residential Standard 6.3 (Legal Rights – Group Presentations).

S. Pro Bono List and Resident Sign-Up

1. The U.S. Department of Justice (DOJ), Executive Office For Immigration Review (EOIR) produces and updates a list of local pro bono legal organizations. FRCs will promptly and prominently post the most current list in common areas.
2. Any legal organization or individual on the current list may write to the ICE Facility Administrator to request the posting and/or general circulation of a sign-up sheet to facilitate attorney-client meetings. Upon approval, the ICE Facility Administrator will notify residents of the sign-up sheet's availability and, according to established procedures, ensure coordination with the pro bono organization.

T. Consequences for Violations of Visitation and Contraband Rules

The following applies to violations by FRC Visitors:

1. Any visitor who violates any visitation rule, including adversely impacting the safety or security of the facility, may face corrective action, including visitation restrictions from all FRCs, immediate cancellation or termination of a visit, and/or suspension of future visitation privileges.

2. Any offense involving contraband or other criminal violations may lead to criminal arrest and referral for prosecution.

3. The ICE Enforcement and Removal Operations (ERO), Field Office Director (FOD), in the AOR of the relevant FRC, is designated as the deciding official on all corrective actions considered against legal visitors.

4. The FOD will confer with the AOR's Office of the Principal Legal Advisor Office of the Chief Counsel prior to taking corrective action taken against legal visitors.

5. FOD must notify Assistant Director for Field Operations within two hours of any terminated or refused legal visit. Barred visitors will receive prompt basis for such restriction.

6. After five business days, visitors barred from the facility may submit a written request to the FOD requesting reinstatement of visitation privileges. The FOD, or designee, will provide a written response to each request.

Thomas Homan
Executive Associate Director
Enforcement and Removal Operations

10/30/2015
Date

ICE/DRO RESIDENTIAL STANDARD

VISITATION

I. **PURPOSE AND SCOPE. Residents will be able to maintain ties through visitation with their families, the community, legal representatives, and consular officials, within the constraints of safety and good order.**

Conjugal visits for ICE/DRO residents are prohibited.

II. **EXPECTED OUTCOMES.** The expected outcomes of this Residential Standard are as follows:

1. Residents will be able to receive contact visits from their families, associates, legal representatives, consular officials, and others in the community.
2. Residents will be advised of visiting privileges and procedures as part of the facility's admission and orientation program in a language he or she can understand.
3. Information about visiting policies and procedures will be readily available to the public.
4. The number of visitors a resident may receive and the length of visits will be limited only by reasonable constraints of space, scheduling, staff availability, safety, security, and good order. The minimum duration for a visit shall be 60 minutes.
5. Visitors will be required to adequately identify themselves and register in order to be admitted into a facility; and safety, security, and good order will be maintained.
6. A background check will be conducted on all new volunteers prior to their being approved to provide services to residents.
7. Each new volunteer will complete an appropriate, documented orientation program, and sign an acknowledgement of his or her understanding of the applicable rules and procedures and an agreement to comply with them.
8. Where required, residents have regular access to translation services and/or are provided information in a language that they understand.
9. The standard complies with federal laws and with DHS regulations regarding residents with special needs.

III. **DIRECTIVES AFFECTED.** None

IV. **REFERENCES**

The First Edition National Residential Standards were written using a variety of methodologies including previous and current practices, review and comment from various subject matter experts, review and comment from various government and non-government organizations, and a review of current state codes in Pennsylvania and Texas. Each standard is written in a manner that affords each resident admission and continuous housing to a family residential facility in a dignified and respectful manner. There are no specific codes, certifications, or accreditations that

deal specifically with unique management requirements of families awaiting the outcome of their immigration proceeding in a non-secure custodial environment.

American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ALDF: 5B-01, 5B-02, 5B-03, 5B-04, 2A-21, 2A-27, 2A-61, 6A-02, 6A-06, 7B-03, 7C-02, 7F-05, 7F-06.

V. EXPECTED PRACTICES

1. Overview

Facilities that house ICE/DRO residents provide visiting facilities and procedures for residents to maintain communication with persons in the community. Safety, security, and good order are always primary considerations in a residential facility. Visitors must be properly identified and attired, and are subject to search upon entering the facility and at any other time while in the facility. Except as otherwise permitted herein, visitors may not give anything directly to a resident, although it may be permissible to leave certain items and funds for a resident. All visits in residential facilities shall be contact visits.

Any violation of the visitation rules may result in corrective action against the resident. Introduction of contraband or other criminal violations may lead to criminal prosecution of a visitor and/or resident. Violations may also be grounds for visitor's to be permanently barred from eligibility to visit residents.

As detailed later in this Residential Standard, the category of visitation requested will determine conditions of visitation, including visitors permitted, hours of visitation, the approval process, and the location in the facility for the visit. Visits are categorized as one of the following:

a. Social Visitation. Family, relatives, friends and associates. Children may be subject to special restrictions. (Paragraph 9)

b. Legal Visitation. Attorneys, other legal representatives, and legal assistants. (Paragraph 10)

c. Consultation Visitation. For residents subject to Expedited Removal. (Paragraph 11)

d. Consular Visitation. Similar to legal visitation but with consular officials who have U.S. Department of State identification. (Paragraph 12)

e. Non-Governmental Organization Visitation and Tours. (Paragraph 13)

f. Community Service Organization Visitation. Representatives of civic, religious, cultural groups, etc. (Paragraph 14)

g. Other Special Visitation. (Paragraph 15)

2. General

Each facility shall establish written visiting procedures, including a schedule and hours of visitation.

All visits shall be contact visits within a residential center.

A facility administrator may temporarily restrict visiting when necessary to ensure the safety and good order of the facility.

3. Notification of Visiting Rules and Hours

Each facility shall:

a. Provide written notification of visitation rules and hours in the resident handbook (or equivalent) given each resident upon admission.

b. Post the rules and hours in common areas and each housing unit, where they can easily be seen by residents.

c. Make the schedule and procedures available to the public, both in written form and telephonically. A live voice or recording shall provide telephone callers the rules and hours for all categories of visitation.

d. Post visiting rules and hours in the visitor waiting area.

4. Visitor Logs

Each facility shall maintain a log of all general visitors, and a separate log of legal visitors, as described below.

Facility staff shall record the following information in the **general visitor's log**:

a. The name and alien registration number (A-number) of the resident visited

b. The visitor's name and address

c. The visitor's immigration status

d. The visitor's relationship to the resident

e. The date and time in and time out

See 10 n for the procedures for the **legal visitor's log**.

5. Incoming Property and Funds for Residents Brought by Visitors

In accordance with the Residential Standard on "**Funds and Personal Property**," each facility shall have written procedures regarding incoming property and money for residents. The facility administrator may allow a visitor to leave cash or a money order with a designated staff member for deposit in a resident's account, and shall provide the visitor with a receipt for money and property left at the facility. **Under no circumstances may visitors give property or money directly to a resident.**

The shift supervisor must approve all items that visitors bring for residents. The visiting room staff may not accept articles or gifts of any kind for a resident, unless the facility administrator and/or shift supervisor has approved them.

Residents may receive only minimal amounts of personal property, including:

a. Small religious items

b. Religious and secular reading material (soft cover)

c. Legal documents and papers

d. Pictures (10 maximum), measuring 5" x 7" or smaller
e. Prescription glasses
f. Dentures
g. Personal address book or pages
h. Correspondence
i. Wedding rings
j. Other items approved by the facility administrator

6. **Consequences of Violation of Visitation and Contraband Rules**

Any violation of the visitation rules may result in corrective action against the resident, which may include the loss of visitation privileges. Visiting privileges can be revoked only through the formal resident review process; however, the facility administrator has the authority to restrict or suspend a resident's ordinary visiting privileges temporarily when there is reasonable suspicion that the resident has acted in a way that threatens the safety, security, or good order of the facility. Ordinarily, the restriction or suspension should be limited to the time required to investigate and initiate the corrective action.

A visitor's failure to abide by visiting rules may result in immediate cancellation or termination of a visit and/or suspension of future visitation privileges.

Introduction of contraband or other criminal violations may lead to criminal prosecution of a visitor and/or resident.

7. **Dress Codes for Visitors**

The facility shall establish and maintain a dress code for visitors over the age of five (5) years. A written copy shall be available to the public upon request.

The minimum dress code is as follows.

a. **Female Visitors**
   1) Shorts shall cover customarily covered areas of the anatomy, including the buttocks and crotch area, both when standing and sitting. Shorts no higher than mid-thigh comply. "Short shorts," jogging shorts, cut-offs, and other obviously inappropriate short garments are prohibited.
   2) Skirts and dresses shall extend no higher than mid-thigh when the wearer is seated.
   3) Slits in skirts and dresses shall rise no higher than mid-thigh when the wearer is seated.
   4) Sheer (see-through) clothing is prohibited.
   5) The top of shirts and dresses (excluding straps) shall be no lower than the underarm in the front and back. Bare midriffs and strapless tops, tube tops, and swimsuits are prohibited.
   6) Shoes shall be worn at all times.

7) Gang "colors" and other gang displays are prohibited.

b. Male Visitors

1) Shorts shall cover customarily covered areas of the anatomy, including the buttocks and crotch area, both when standing and sitting. Shorts no higher than mid-thigh comply. "Short shorts," jogging shorts, cut-offs, and other obviously inappropriate short garments are prohibited.

2) Shirts shall be worn at all times. Muscle shirts, bare midriff shirts and sleeveless shirts are prohibited.

3) Shoes shall be worn at all times.

4) Gang "colors" and other gang displays are prohibited.

8. **Visiting Room Conditions**

The facility's visiting areas shall be appropriately furnished and arranged, and as comfortable and pleasant as practicable. Also, as practicable, space should be provided outside of the immediate visiting areas for the secure storage of visitors' coats, handbags, and other personal items.

The facility administrator shall provide adequate supervision of all visiting areas, and the visiting area staff shall ensure that all visits are conducted in a quiet, orderly, and dignified manner.

9. **Visits by Family and Friends**

a. Hours and Time Limits

Each facility shall establish a daily visiting schedule based on the resident population and the demand for visits. Visits shall be permitted daily during set hours. The facility may authorize special visits for family visitors unable to visit during regular hours. Where staff resources permit, the facility may establish evening visiting hours.

To accommodate the volume of visitors within the limits of space and staff resources, and to ensure safety, the facility administrator may restrict visits. The facility's written rules shall specify time limits for visits -- 60 minutes minimum, under normal conditions. ICE/DRO encourages more generous limits when possible, especially for family members traveling significant distances. In unforeseen circumstances, such as the number of visitors exceeding visiting room capacity, the facility administrator may modify visiting periods.

b. **Persons Allowed to Visit**:

Family, relatives, friends and associates unless they would pose a threat to the security and good order of the institution

c. **Visitor Identification and Search**

Staff shall verify each visitor's identity before admitting him or her to the facility. No adult visitor may be admitted without verified photo identification, such as a driver's

license or other photo identification card. Staff shall contact the supervisor on duty when a visitor's identity is in question. At the supervisor's discretion, a minor (under the age of 18) without positive identification may be admitted if the accompanying adult visitor vouches for his or her identity. Children must remain under the direct supervision of an adult visitor, so not to disturb other visitors; and excessively disruptive conduct by children may result in termination of the visit.

The ICE facility administrator may establish a procedure for limited random criminal background and warrant checks, for the purpose of ensuring facility safety and security.

Staff shall escort visitors to the visiting room only after completing identification and inspection, as provided in the facility's written procedures. All visitors are subject to a personal search, which may include a pat ("pat-down") search as well as a visual inspection of purses, briefcases, packages, and other containers. No person who refuses to be searched may be permitted to visit.

In each facility, written procedures shall provide for the prevention, cancellation, or termination of any visit that appears to pose a threat to safety, security, or good order. Staff who believe a situation poses such a threat shall alert the shift supervisor or equivalent, who may prevent, cancel, or terminate the visit.

Inspecting staff may ask the visitor to open a container for visual inspection of its contents. If warranted, staff may ask the visitor to remove the contents and place them on a table; however, the staff may not place his or her hands inside the container. Facilities shall provide and promote visitors' use of lockers or a secure area provided for safekeeping of personal belongings during visits.

Only a staff member with the rank of supervisor or above may deny or cancel a visit. In these cases, the staff member shall document his or her action in a memorandum sent through official channels to the facility administrator. The visiting room staff, with concurrence from the shift supervisor, may terminate visits involving inappropriate behavior.

Facilities shall not require approved visitor lists from ICE/DRO residents.

d. **Contact Visits**

Written procedures shall detail the limits and conditions of contact visits in facilities permitting them. Ordinarily, within the bounds of propriety, handshaking, embracing, and kissing are permitted during the visit; however, staff may limit physical contact to minimize opportunities for contraband introduction and otherwise maintain the orderly operation of the visiting area. Liberal application of this standard is encouraged,

For further information see the Residential Standard on "**Searches of Residents**."

10. **Visits by Legal Representatives and Legal Assistants**

a. **General**

In visits referred to as "legal visitation," each resident may meet privately with current or prospective legal representatives and their legal assistants.

b. **Hours**

Each facility shall permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days, and a minimum of four hours per day on weekends and holidays.

The facility shall provide notification of the rules and hours for legal visitation, as specified above, and prominently post this information in the waiting areas and visiting areas for general and legal visitors, in the recreation area and in the housing units.

On regular business days, legal visitations may proceed through a scheduled meal period, and the resident shall receive a meal tray after the visit.

c. **Persons Allowed to Visit**

Subject to the restrictions stated below, individuals in the following categories may visit residents to discuss legal matters:

1). **Attorneys and Other Legal Representatives**

An attorney is any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, and is not under an order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

A legal representative is an attorney or other person representing another in a matter of law, including law students, law graduates not yet admitted to the bar, "reputable individuals" (8 CFR 292.1), accredited representatives, accredited officials, and attorneys from other countries. See 8 CFR 292.1 for more detailed definitions of these terms.

2). **Legal Assistants**

Upon presentation of a letter of authorization from the legal representative under whose supervision he or she is working, an unaccompanied legal assistant may meet with a resident during legal visitation hours. The letter shall state that the named legal assistant is working on behalf of the supervising legal representative for purposes of meeting with the ICE/DRO resident(s).

3). **Interpreters**

The facility shall permit interpreters to accompany legal representatives and legal assistants on legal visits, subject to **Visitor Identification and Search** procedures detailed above.

4). **Messengers**

The facility shall permit messengers who are not legal representatives or legal assistants to deliver documents to and from the facility, but not to visit residents.

d. **Identification of Legal Representatives and Assistants**

Prior to each visit, all legal representatives and assistants shall be required to

provide identification.

State bar cards are the preferred forms of identification, and attorneys who are members of state bars that do not provide bar cards are required to present other documentation that verifies bar membership. If such documentation is not readily available to attorneys licensed in a particular state, the person shall be required to indicate where he or she is licensed as an attorney and how that fact may be verified.

Legal representative and legal assistants may not be asked to state the legal subject matter of the meeting.

Legal representatives and assistants are subject to a search at any time of his or her person and belongings for the purpose of ascertaining the presence of contraband.

e. Identification of Resident To Be Visited

The facility may not require legal representatives and assistants to submit a resident's A-number as a condition of visiting, and shall make a good-faith effort to locate a resident if provided with any other information about the resident.

f. Call-Ahead Inquiries

Each facility shall establish a written procedure to allow legal representatives and assistants to telephone the facility in advance of a visit, to determine whether a particular individual is detained there. The request must be made to the on-site ICE/DRO staff or, where there is no resident staff, to the ICE/DRO office with jurisdiction over the facility.

If the person seeking the information states that he or she already represents the resident, ICE/DRO staff shall confirm that the caller's name corresponds with the name on a Form G-28, *Notice of Appearance*, on file. To protect confidentiality, if a Form G-28 is not yet on file, ICE/DRO staff must be satisfied that the person making the inquiry is, in fact, a legal representative or legal assistant who is considering representing the subject resident in legal proceedings.

When unfamiliar with the person making the inquiry, ICE/DRO staff should request documentary evidence, such as a letter of request on identifying letterhead, and shall accept such evidence by fax. Alternatively, at the request of the caller, staff shall seek the consent of the resident for the disclosure of residential information. In either case, ICE/DRO staff shall respond to the caller as soon as possible, but in no case more than 24 hours after the call was made.

Notwithstanding the general policy set forth in the previous paragraph, the ICE/DRO retains the discretion to withhold this telephonic information on a case-by-case basis if it has clear and compelling facts to support the belief that disclosure would endanger national security, facility security, or the resident. In such circumstances, ICE/DRO staff may request further information to allay the security concerns raised and may seek the resident's consent to the disclosure.

g. Pre-Representation Meetings

During the regular hours for legal visitation, the facility shall permit residents to meet with prospective legal representatives or legal assistants. The facility shall document such "pre-representation meetings" in the logbook for legal visitation.

At the "pre-representation" stage no attorney-client relationship exists. Therefore, to meet with a resident, legal service providers need not complete a Form G-28 to state that they are legal representatives of the resident).

h. Form G-28 Required for Attorney-Client Meetings

Attorneys representing residents on legal matters unrelated to immigration are not required to complete a Form G-28.

Once an attorney-client relationship has been established, the legal representative shall complete and submit a Form G-28, which shall be available in the legal visitation reception area. Staff shall collect completed forms and forward them to ICE/DRO.

Each completed Form G-28 becomes a permanent part of the resident's A-file, and it remains valid until ICE/DRO receives written notice of the relationship's termination from the resident or the legal representative. Staff shall place such notices in the A-file on top of the Form G-28.

i. Private Meeting Room

Visits between legal representatives or assistants and a resident are confidential, and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings.

Staff shall not be present in the confidential area during the meeting unless the legal representative or assistant requests the presence of staff; however, staff may observe such meetings visually through a window or camera to the extent necessary to maintain security, as long as staff cannot overhear the conversation.

When a situation arises where private conference rooms are in use and the attorney wishes to meet in a regular or alternate visiting room, the request should be accommodated to the extent practicable. Such meetings should be afforded the greatest degree of privacy possible under the circumstances.

Due to the presence of children and the requirement to provide for attorney-client visitation, visitation areas shall be constructed in a manner that allows for parents to view the activities of their minor children within the visitation area. When necessary each facility is required to provide a means where a parent can talk privately out of the hearing range of the children.

j. Materials Provided to Residents by Legal Representatives

The facility's written legal visitation procedures must provide for the exchange of documents between a resident and the legal representative or assistant.

Documents or other written material provided to a resident during a visit with a legal representative shall be inspected but not read. Residents are entitled to retain legal material received for their personal use. Quantities of blank forms or self-help legal material in excess of those required for personal use may be held for the resident with his or her stored property. The resident shall be permitted access to these documents, through the established avenues of communication.

k. Resident Search

Each facility shall have written procedures to govern resident searches. Each

resident shall receive a copy of these search procedures in the resident handbook (or equivalent) given to each resident upon admission.

l. Group Legal Meetings

Upon the request of a legal representative or assistant, the facility administrator may permit a confidential meeting (with no staff present) involving the requester and two or more residents. This may be for various purposes: pre-representational, representational, removal-related, etc. The facility should grant such requests to the greatest extent practicable; that is, if it has the physical capacity and the meeting would not unduly interfere with security and good order. Each facility administrator shall limit resident attendance according to the practical concerns of the facility, or the security concerns associated with the meeting in question.

See also the Residential Standard on "**Legal Rights Group Presentations**."

m. *Pro Bono* List and Resident Sign-Up

ICE/DRO shall provide each facility the official list of local *pro bono* legal organizations, which is updated quarterly by the local DOJ Executive Office for Immigration Review. The facility shall promptly and prominently post the current list in resident housing units and other appropriate areas.

Any legal organization or individual on the current list may write the facility administrator to request the posting and/or general circulation of a sign-up sheet. The facility administrator shall then notify residents of the sign-up sheet's availability and, according to established procedures, ensure coordination with the *pro bono* organization.

n. Legal Visitation Log

Staff shall maintain a separate log to record all legal visitors, including those denied access to the resident. The log shall include the reason(s) for denying access.

Log entries shall include: the date; time of arrival; visitor's name; visitor's address; supervising attorney's name (if applicable); resident's name and A-number; purpose of visit (e.g., pre-representation, representational, Expedited Removal consultation); time visit began; time visit ended. Staff shall also record any important comments about the visit.

o. Availability of Legal Visitation Policy

The facility's written legal visitation policy shall be available upon request and posted in all common areas and housing units. The site-specific policy shall detail the visitation hours, procedures and standards, including, but not limited to: telephone inquiries; dress code; legal assistants working under the supervision of an attorney; pre-representational meetings; Form G-28 requirements; identification and search of legal representatives; identification and search of visitors; materials provided to residents by legal representatives; confidential group legal meetings; and resident sign-up.

11. Consultation Visits for Residents Subject to Expedited Removal

a. General

Residents subject to Expedited Removal who have been referred to Asylum Officers are entitled by statute and regulation to consult with persons of the resident's choosing, both prior to the interview, and while the Asylum Staff's decision is under review. Such consultation visitation is for the purpose of discussing immigration matters, not for social visits.

- The consultation visitation period ***begins*** before any interview with Asylum staff, and continues while the Asylum staff's determination undergoes review by the Supervisory Asylum Staff or Immigration Judge.
- The consultation visitation period ***ends*** when a Notice to Appear is issued and the resident is placed in removal proceedings before an immigration judge; however, the resident retains legal and other visitation privileges, in accordance with this Residential Standard.
- Consultation visitation may neither incur Government expense nor unduly delay the removal process.

b. Method of Consultation

Because expedited removal procedures occur within short time frames, each facility shall develop procedures that liberally allow an opportunity for consultation visitation, in order to ensure compliance with statutory and regulatory requirements and to prevent delay in the Expedited Removal process. Given the time constraints, consultation by mail will generally not prove viable.

The facility shall facilitate consultation visitation by telephone and face-to–face, and staff shall be sensitive to individual circumstances when resolving consultation-related issues.

Consultation visitation shall be allowed during legal visitation hours and during general visitation hours; however, confidentiality shall be ensured only during legal visitation hours. If necessary to meet demand, the facility administrator shall increase the facility's consultation visiting hours.

c. Persons Allowed To Visit for Consultation Purposes

Residents subject to Expedited Removal may consult whomever they choose, in person or by phone, at any time, during the first 48 hours following notification of Expedited Removal. Consultants might include, but are not limited to, attorneys and other legal representatives, prospective legal representatives, legal assistants, members of non-governmental organizations (NGOs), friends, and family members.

Consultation visitors are subject to the same identification and security screening procedures as general visitors. If documented security concerns preclude an in-person visit with an individual, the facility administrator shall arrange for consultation by telephone. If security reasons also preclude consultation by telephone, the facility administrator shall consult the respective Chief Counsel.

d. **Privacy**

Consultation visits, in person or by telephone, receive the same privacy as communications between legal representatives and residents.

e. **Admittance for Asylum Staff Interview**

Residents subject to Expedited Removal may bring and consult advisors during the Asylum staff interview. The presence of persons to consult is also allowed during the immigration judge's review of a negative credible fear determination, at the judge's discretion.

f. **Log**

Staff shall record consultation visits in the legal visitation log.

The purpose of the visit shall be noted as "ER consultation."

The facility shall create a separate record of the visit that is placed in the resident's A-file, or place a copy of the visitation log page in the resident's A-file.

g. **Form G-28 for Consultation Visits**

Visitors are not required to file a Form G-28 to participate in a consultation visit or provide consultation during an Asylum staff interview or immigration judge's review of a negative credible fear determination. This applies even if the visitor is an attorney or legal representative.

h. **Other Considerations for Consultation Visits**

For other considerations in regard to consultation visits, the above procedures for **"Visits by Legal Representatives and Legal Assistants"** apply. Specifically, see policies for Group Legal Meetings, Call-Ahead Inquiries, Searches, Identification of Resident to be Visited, Materials Provided to Residents by Legal Representatives, *Pro Bono* List and Resident Sign-Up, and Availability of Legal Visitation Policy.

12. Consular Protection[1]

According to international agreements, residents must be advised of their right to consular access, and the ICE/DRO must facilitate this access. Therefore, it is ICE/DRO policy and practice that all detained individuals shall be provided with notice of their right to contact their consular representatives and to receive visits from their consulate's staff during intake orientation and in the resident handbook.

The facility administrator shall ensure that all residents are notified of and afforded the right to contact and receive visits from their consular staffs. The same hours, privacy, and conditions that govern legal visitation guide consular visitation. Consular visits may be permitted at additional times with the facility administrator's prior authorization.

To visit, consular staffs must present U.S. Department of State identification.

13. Non-Government Organization Visitation with Residents and Tours of

[1] For additional guidance, ICE officers should consult ICE Office of Investigations Directive 73001.1 "Consular Notification of Detained or Arrested Foreign Nationals."

Facilities

All requests by NGOs and other organizations to send representatives to visit residents must be submitted in writing to JFRMU. The written request must state the exact reason for the visit and issues to be discussed.

All efforts shall be made to accommodate NGO requests for facility tours in a timely manner. All tours shall be limited to a reasonable number of participants, who must submit in a timely manner the personal information needed for their background checks. Tours shall be scheduled at the convenience of the residential facility, so as not to disrupt normal operations and to be in compliance with facility security requirements.

Written requests from domestic or international organizations associated with residential issues shall be submitted to JFRMU.

14. Visits from Representatives of Community Service Organizations

The facility administrator, in consultation with ICE/DRO, may approve visits to one or more residents by individuals or groups representing community service organizations, including civic, religious, cultural, therapeutic, and other groups. Volunteers may provide a special religious, educational, therapeutic, or recreational activity.

The facility administrator's approval shall take into account such factors as:

a. Safety and security considerations

b. Availability of personnel to supervise the activity

c. Sufficient advance notification to the facility administrator

Residents' immediate family and other relatives, friends, and associates, as detailed above under **Persons Allowed to Visit**, may not serve as volunteers.

To assist the facility administrator's decision, facility staff (such as chaplains and recreation specialists) shall verify the organization's *bona fide* interests and qualifications for this type of service.

Groups must:

a. **Provide the facility with advance notification** of the names, dates of birth, and Social Security numbers of the group members who will be visiting.

All volunteers, regardless of title or position, are subject to a minimal background check that includes, but is not limited to, a criminal history check, verification of identity, occupation, and credentials for the type of activity involved.

b. **Provide identification** for the individual members of the group upon arrival at the facility.

c. **Comply with visitation rules.**

Each approved volunteer shall receive an appropriate orientation to the facility and acknowledge his or her understanding of rules and procedures by signing an agreement to comply, particularly in regard to permissible behavior and relationships with residents. The orientation and signed agreement shall:

- Specify lines of authority, responsibility, and accountability for

volunteers.

- Prohibit volunteers from:
  - Using their official positions to secure privileges for themselves or others
  - Engaging in activities that constitute a conflict of interest
  - Accepting any gift from or engaging in personal business transactions with a resident or a resident's immediate family

All volunteers shall be held accountable for compliance with the rules and procedures.

d. **Read and sign a waiver of liability** from each group member that releases ICE/DRO of all responsibility in case of injury during the visit, before being admitted to any secure portion of the facility or location where residents are present.

15. Other Special Visits

a. **Law Enforcement Officials' Visits**

Facility visitation procedures shall cover law enforcement officials requesting interviews with residents and requires notification to the Field Office Director, Chief Counsel, and JFRMU.

b. **Visitation by Former Residents or Aliens in Proceedings**

Former ICE/DRO-residents, individuals with criminal records, and individuals in deportation proceedings shall not be automatically excluded from visiting. Individuals in any of these categories must so notify the facility administrator before registering for visitation privileges. To determine visitation privileges, the ICE facility administrator shall weigh the nature and extent of an individual's criminal record and/or prior conduct against the benefits of visitation.

c. **Visiting Rules Regarding Animals**

Each facility shall establish and disseminate a policy and implementing procedures governing under what circumstances, if any, animals may accompany human visitors onto or into facility property.

Standard Approved:

12/21/07

John P. Torres
Director
Office of Detention and Removal

Date

ICE/DRO RESIDENTIAL STANDARD

TELEPHONE ACCESS

I. **PURPOSE AND SCOPE. Residents may, through the reasonable and equitable access to telephone services, maintain ties with their families and others in the community.**

II. **EXPECTED OUTCOMES.** The expected outcomes of this Standard are as follows:

1. Residents will have reasonable and equitable access to reasonably-priced telephone services.
2. Residents with hearing or speech disabilities will be provided reasonable accommodations.
3. Where required, residents have regular access to translation services and/or are provided information in a language that they understand.
4. The standard complies with federal laws and with DHS regulations regarding residents with special needs.

III. **DIRECTIVES AFFECTED.** None

IV. **REFERENCES**

The First Edition National Residential Standards were written using a variety of methodologies including previous and current practices, review and comment from various subject matter experts, review and comment from various government and non-government organizations, and a review of current state codes in Pennsylvania and Texas. Each standard is written in a manner that affords each resident admission and continuous housing to a family residential facility in a dignified and respectful manner. There are no specific codes, certifications, or accreditations that deal specifically with unique management requirements of families awaiting the outcome of their immigration proceeding in a non-secure custodial environment.

American Correctional Association 4th Edition, Standards for Adult Detention Facilities: 4-ALDF-2A-65, 2A-66, 5B-11, 5B-12, 6a-02, 6A-09.

ICE/DRO Residential Standard on "**Staff-Detention Communication**," in regard to monitoring and documenting telephone serviceability.

V. **EXPECTED PRACTICES**

1. **Telephones and Telephone Services**

   a. **Number**

   To ensure sufficient access, each facility shall provide at least one telephone for every 16 residents.

b. Costs

Generally, residents or the persons they call are responsible for the costs of telephone calls; however, there are exceptions as required below.

Each facility shall ensure that residents have access to telephone services at a cost that mirrors community standards. Contracts for such services shall comply with all applicable state and federal regulations, and shall be based on rates and surcharges commensurate with those charged to the general public. Any deviations shall reflect actual costs associated with the provision of services in a residential setting. Contracts shall also provide the broadest range of calling options that are determined by the facility administrator to be consistent with the requirements of sound residential facility management.

c. Special Services

Accommodations shall be made for residents with hearing or speech disabilities, or residents who wish to communicate with such persons. Such accommodations may include, for example, telephones with volume controls, TDD (Telecommunications Device for the Deaf) or comparable equipment. These services shall be provided to ensure these residents are provided effective access.

d. Maintenance

Each facility shall maintain resident telephones in proper working order. Designated facility staff shall inspect the telephones daily, promptly report out-of-order telephones to the repair service, and ensure that required repairs are completed quickly.

2. Monitoring of Resident Telephone Calls

Each facility shall have a written policy on the monitoring of resident telephone calls. If telephone calls are monitored, the facility shall:

- Notify residents in the resident handbook or equivalent, provided upon admission.
- At each monitored telephone, place a notice that states:
  - That resident calls are subject to monitoring.
  - The procedure for obtaining an unmonitored call to a court or legal representative, or for the purposes of obtaining legal representation.

Absent a court order, a resident's call to a court or a legal representative or for the purposes of obtaining legal representation may not be aurally monitored.

3. Resident Notification

Each facility shall provide telephone access rules in writing to each resident upon admission, and also shall post these rules where residents can easily see them.

4. Resident Access

Each facility administrator shall establish and oversee rules and procedures that provide residents reasonable and equitable access to telephones during established facility

"waking hours" (which exclude the hours between lights-out and morning resumption of scheduled activities).

Ordinarily, a facility may restrict the number and duration of general telephone calls only for the following reasons:

a. **Availability.** When required by resident telephone use demands, rules and procedures may include, but are not limited to, reasonable limitations on the duration and the number of calls per resident, the use of predetermined time-blocks, and advance sign-up.

b. **Emergencies.** Escapes, escape attempts, disturbances, fires, power outages, etc. Telephone privileges may be suspended entirely during an emergency, but only with the authorization of the facility administrator or designee, and only for the briefest period necessary under the circumstances.

5. Direct or Free Calls

In addition to the requirements above, each facility shall permit residents to make **direct or free** calls to the offices and individuals listed below. Current telephone numbers for the following will be posted in all housing areas and/or by public access telephones. A facility may place reasonable restrictions on the hours, frequency and duration of such direct and/or free calls, but may not otherwise limit a resident's attempting to obtain legal representation.

- The local immigration court and the Board of Immigration Appeals
- Federal and state courts where the resident is in, or may become involved in, a legal proceeding
- Consular officials
- Office of the Inspector General of the U.S. Department of Homeland Security at: (800) 323-8603
- The United Nations High Commissioner for Refugees
- Legal representatives, to obtain legal representation, or for consultation, when a resident is subject to Expedited Removal. Any facility restrictions on other direct or free calls must not unduly limit a resident's attempt to obtain legal representation.
- A government office, to obtain documents relevant to his or her immigration case
- Immediate family or others, for residents in personal or family emergencies, or who otherwise demonstrate a compelling need (to be interpreted liberally)

a. Request Forms

Where access to free telephone calls is limited by technology, residents may complete request forms to make direct or free calls. Facility staff shall assist them as needed, especially illiterate or non-English speaking residents. All requests for assistance shall be reviewed and responded to within one calendar day. All denials shall be documented and a copy forwarded to the resident and ICE/JFRMU for

review.

b. **Time Requirements**

Staff shall allow residents to make such calls as soon as possible after the requests, factoring in the urgency stated by the resident. Access shall always be granted within 24 hours of the request, but ordinarily, within 8 facility-established "waking hours."

Staff must document and report to ICE/DRO any incident of delay beyond eight "waking hours."

c. **Indigent Residents**

A facility may not require indigent residents to pay for the types of calls listed above if they are local calls, nor for non-local calls if there is a compelling need. Each facility shall enable all residents to make calls to the ICE/DRO-provided list of free legal service providers and consulates at no charge to the resident or the receiving party.

6. **Legal Calls**

a. **Restrictions**

A facility may neither restrict the number of calls a resident places to his or her legal representatives, nor limit the duration of such calls, by rule or automatic cut-off, unless necessary for security purposes or to maintain orderly and fair access to telephones. If time limits are necessary for such calls, they shall be no less than 20 minutes, and the resident shall be allowed to continue the call at the first available opportunity, if desired.

Any facility restrictions on other direct or free calls must not unreasonably limit a resident's attempt to obtain legal representation.

b. **Privacy**

For resident telephone calls regarding legal matters, each facility shall ensure privacy by providing a reasonable number of telephones on which residents can make such calls without being overheard by staff or other residents. Absent a court order, staff may not monitor those calls.

The facility shall inform residents to contact staff if they have difficulty making a confidential call relating to a legal proceeding. If so notified, the staff shall take measures to ensure that the call can be made confidentially.

Privacy may be provided in a number of ways, including:

- Telephones with privacy panels (side partitions) that extend at least 18 inches to prevent conversations from being overheard;
- Telephones placed where conversations may not be readily overheard by others, or;
- Office telephones on which residents may be permitted to make such calls.

Telephones shall not be placed near television sets or in any area where it can be reasonably expected that excessive noise may interfere with the caller ability to communicate privately.

7. **Inter-facility Telephone Calls**

Upon a resident's request, facility staff shall make special arrangements to permit the resident to speak by telephone with an immediate family member detained in another facility. Immediate family members include spouses, common-law spouses, parents, stepparents, foster parents, brothers, sisters, and biological or adopted children.

Reasonable limitations may be placed on the frequency and duration of such calls.

Facility staff shall liberally grant such requests when they involve discussion of legal matters, and shall afford the resident privacy to the extent practical.

8. **Incoming Calls**

Facility staff shall take and deliver **emergency** telephone messages to residents as promptly as possible.

When a call concerns an **emergency**, facility staff shall:

- Record the caller's name and telephone number.
- Deliver the message to the resident as soon as possible.
- Permit the resident to return the call as soon as reasonably possible, within the constraints of security and safety.
- If the resident is indigent, enable him or her to make a free return call.

Standard Approved:

DEC 2 1 2007

John P. Torres
Director
Office of Detention and Removal

Date

ICE/DRO RESIDENTIAL STANDARD

MEDICAL CARE

I. **PURPOSE AND SCOPE. Residents have access to health care maintenance services, including those related to mental health, dental care, prevention, health education, and emergency care in a timely and efficient manner.**

In many facilities, medical care for ICE/DRO residents is provided by the Public Health Service's Division of Immigration Health Services (DIHS). The term "DIHS-staffed facility" refers to a residential facility in which medical care is provided by DIHS.

II. **EXPECTED OUTCOMES.** The expected outcomes of this Standard are as follows:

1. Residents will have access to health care education and maintenance services that are determined by the health care authority to be necessary and appropriate. Services will include prevention, diagnosis, and treatment of medical, dental, and mental health conditions.
2. Newly admitted residents will be informed how to access health services, in a language they can understand.
3. Residents will be able to initiate requests for health services.
4. Residents will have access to the care determined necessary by the health care authority from a resident's admission to the residential facility until they are discharged from treatment, transferred to another facility, or removed from the United States. When indicated, care shall include referral to community-based providers.
5. A transportation system will be available that ensures timely access to health care services, determined necessary by the health care authority, that are only available outside the facility.
6. A resident who requires close, chronic or convalescent medical supervision will be treated in accordance with a plan approved by licensed physician, dentist, or mental health practitioner that includes directions to health care providers and other involved personnel.
7. Residents will have access to specified 24-hour emergency medical, dental, and mental health services.

8. Female residents will have access to pregnancy testing and specified pregnancy management services.
9. All possible steps will be taken to ensure infectious and communicable diseases, including tuberculosis, hepatitis, and HIV/AIDS, are prevented or managed.
10. New direct-care staff will receive tuberculosis tests prior to their job assignment and periodically thereafter, and will be required to obtain the hepatitis B vaccine series.
11. Biohazard waste will be managed and medical and dental equipment decontaminated in accordance with sound medical standards and in compliance with applicable local, state, and federal regulations.
12. Residents with chronic conditions (such as hypertension and diabetes) will receive chronic care and treatment that includes monitoring of medications, laboratory testing, and chronic care clinics. Other residents will be scheduled for routine medical examinations, as determined by the health authority.
13. The facility administrator, or other designated staff, will be notified in writing of any resident whose medical or mental health needs require special consideration in such matters as housing, transfer, or transportation.
14. Residents will have access to emergency and specified routine dental care, provided under direction and supervision of a licensed dentist.
15. Residents will be provided health education and wellness information.
16. Each newly admitted resident (including transfers) will immediately receive a documented medical and mental health screening. Each facility's health care provider shall conduct a health appraisal and physical examination on each adult resident within 7 days of arrival, and on each minor within 24 hours of arrival.
17. Residents with mental health conditions will be referred, as necessary, for detection, diagnosis, treatment, and stabilization to prevent psychiatric deterioration while confined.
18. Crisis intervention services will be available for residents who experience acute mental health episodes.
19. Restraints for medical or mental health purposes will be authorized only by a qualified medical or mental health provider, in accordance with the requirements specified in this Residential Standard.
20. Residents whose mental health needs exceed the capabilities of the facility will be transferred to facility with the capacity to meet their needs.

21. Prior to placement in a non-residential facility specifically designated for the care of the severely mentally ill or developmentally disabled, a resident shall be afforded due process in compliance with applicable federal, state, and local laws.

22. Prescription and nonprescription medicines will be stored, inventoried, dispensed, and administered in accordance with sound standards, and facility needs for safety and security.

23. Health care services will be provided by a designated health authority, and clinical decisions will be the sole province of the responsible clinician.

24. Health care services will be provided by trained and qualified personnel whose duties are governed by job descriptions and who are properly licensed, certified, credentialed, and/or registered in compliance with applicable state and federal requirements.

25. Residential and health care personnel will be trained, at least annually, to respond to health-related emergency situations within four minutes of notification, and to properly use first aid kits, available in designated areas.

26. Information about each resident's health status will be treated as confidential. Active health records will be maintained in accordance with accepted standards, separate from other residents' residential files, and shall be accessible only in accordance with written procedures and applicable laws.

27. The informed consent standards of the facility's jurisdiction will be observed and adequately documented at the facility.

28. Medical and mental health interviews, examinations, and procedures will be conducted in settings that respect residents' privacy, and a female resident will be provided with a female observer for health care performed by male health care providers.

29. Health record files on each resident will be well organized, available to all practitioners, and properly maintained and safeguarded.

30. When a resident is transferred to another facility, the transferring facility will ensure appropriate records are transferred in accordance with established ICE policy.

31. Where required, residents have regular access to translation services and/or are provided information in a language that they understand.

32. The standard complies with federal laws and with DHS regulations regarding residents with special needs.

III. **DIRECTIVES AFFECTED. None**

IV. **REFERENCES**

American Correctional Association 4th Edition Standards for Adult Detention Facilities: 4-ALDF-2A-15, 4C-01 through 4C-31, 4C-34 through 4C-41, 4D-01 through 4D-21, 4D-23 through 4D-28, 2A-45, 7D-25.

Residential Standard on "**Admission and Release.**"

Residential Standard on "**Environmental Health and Safety**," particularly in regard to:

- Storing, inventorying, and handling needles and other sharp instruments,
- Standard ("universal") precautions to prevent contact with blood and other body fluids,
- Sanitation and cleaning to prevent and control infectious diseases, and
- Disposing of hazardous and infectious waste.

Residential Standard on "**Sexual Abuse and Assault Prevention and Intervention.**"

Residential Standard on "**Suicide Prevention and Intervention.**"

Residential Standard on "**Hunger Strikes.**"

Residential Standard on "**Terminal Illness, Advance Directives, and Death.**"

United States Public Health Service (USPHS) Division of Immigration Health Services (DIHS) Policies and Procedures Manual.

National Commission on Correctional Health Care, Standards for Health Services in Jails.

Flores v. Reno

V. **EXPECTED PRACTICES**

1. General

Every facility shall directly or contractually provide to its resident population:

- Initial medical screening
- Cost-effective primary medical and dental care as required by the health authority to maintain the health of the resident.
- Emergency care

- Specialized health care, as deemed necessary by the health authority to maintain the health of the resident
- Mental heath care
- Hospitalization as needed within the local community

A designated health authority shall have the overall responsibility for health care services pursuant to a written agreement, contract, or job description. The health authority may be a physician, health services administrator, or health agency. When the health authority is other than a physician, final clinical judgment shall rest with a single, designated, responsible physician, referred to in this Residential Standard as the clinical director.

The health authority shall be authorized and responsible for making decisions about the deployment of health resources and the day-to-day operations of the health services program.

All facilities shall employ, at a minimum, a medical staff and support personnel large enough to perform basic exams and treatments for all residents. The essential positions needed to perform the health services mission and provide the required scope of services shall be described in a staffing plan that is reviewed at least annually by the health authority.

Health care personnel shall perform duties for which they are qualified by training, licensure, certification, job descriptions, and/or written standing, or by direct orders by personnel authorized by law to give such orders. The facility administrator, with the cooperation of the health care authority, shall negotiate and keep current arrangements with nearby medical facilities or health care providers to provide required health care not available within the facility, including securing appropriate custodial staffs to transport and remain with residents for the duration of any off-site treatment or hospital admission.

Ordinarily, clinical decisions shall be made by the responsible physician and shall not be countermanded by non-clinicians. If there is disagreement on the type or extent of treatment that is medically necessary, JFRMU shall make the determination, in consultation with the clinical director and in accordance with the policies and procedures of DIHS. The health care program and the medical facilities shall be under the direction of a health services administrator (HSA) and shall be accredited and maintain compliance with the standards of the Joint Commission on the Accreditation of Health Care Organizations (JCAHO).

2. Communicable Disease and Infection Control

a. General

Each facility shall have a written plan (or plans) that address the management of infectious and communicable diseases, including prevention, education, identification, surveillance, immunization (when applicable), treatment, follow-up, isolation (when indicated), and reporting to local, state, and federal agencies.

Plans shall include:

- Coordination with public health authorities
- Ongoing education for staff and residents
- Control, treatment, and prevention strategies
- Protection of individual confidentiality
- Media relations
- Management of tuberculosis; hepatitis A, B, and C; HIV infection; and avian influenza
- Reporting communicable diseases to local and/or state health departments in accordance with local and state regulations

In regard to the avian influenza, reference is made to the March 2006 32-page Avian Influenza Implementation Plan from DRO Director John P. Torres. The plan establishes guidelines and procedures in anticipation of an influenza pandemic in North America.

In the Quarterly Administrative Meetings described later in this Residential Standard, communicable disease and infectious control activities shall be reviewed and discussed.

In accordance with the Residential Standard on **"Environmental Health and Safety,"** management of biohazard waste and decontamination of medical and dental equipment shall comply with applicable local, state, and federal regulations.

b. Additional Requirements Regarding Tuberculosis

As indicated below in the section on **Medical Screening of New Arrivals**, screening for tuberculosis is initiated at intake, and in accordance with CDC guidelines.

For all **confirmed and suspected** active tuberculosis cases, designated medical staff shall report:

- All cases to local and/or state health departments in accordance with local and state regulations, identified by the custodial agency and the resident's identifying number of that agency. (ICE residents are reported as being in ICE custody and identified by their Alien Numbers.)
- All ICE residents, as well as residents expected to transfer into ICE custody, cases to the DIHS Epidemiology Unit,:
    - By phone to (202) 732-0070, -0071, or -0100, or
    - By faxing a health department notification form to (202) 732-0095.

  Reporting shall include identifying information, Alien Number, case status, available diagnostic results, and treatment status.
- Any movement of ICE residents, including hospitalizations, facility transfers, releases, or removals/deportations shall be reported to the local and/or state health department and the DIHS Epidemiology Unit. If any confirmed or suspected active ICE resident is released or removed prior to the completion of treatment, designated medical staff shall facilitate post-custody case management and continuity of therapy by coordinating with the Epidemiology Unit and the local and/or state health department.

Designated medical staff shall collaborate with the local and/or state health department on tuberculosis and other communicable disease contact investigations.

c. Varicella (chickenpox)

Designated medical staff shall notify DIHS of any varicella cases among ICE residents, and of any ICE residents exposed to active varicella who do not have a history of prior varicella or varicella immunization.

d. Employee Health

The medical authority shall:

- Ensure that all new direct care medical staff members are tested for tuberculosis prior to their job assignments and periodically thereafter.
- Ensure that all new medical staff members have received the hepatitis B vaccine series.

The facility administrator shall:

- Ensure that all new direct care program staff are tested for tuberculosis prior to their job assignments and periodically thereafter.
- Ensure that all new direct care program staff have received the hepatitis B vaccine series. If required staff who are not medical providers, it shall be conducted through an independent health provider service.

3. Notifying Residents About Health Care Services

In accordance with the Residential Standard on **"Resident Handbook,"** the facility shall provide each resident, upon admittance, a copy of the resident handbook or equivalent, in which procedures for access to health care services are explained.

In accordance with the section on **Orientation** in the Residential Standard on **"Admission and Release,"** access to health care services shall be included in the orientation curriculum for newly admitted residents.

4. Facilities

a. Examination and Treatment Area

Adequate space and equipment shall be furnished in all facilities so that all residents may be provided basic health examinations and treatment in private.

The medical facility shall:

- Be located within the primary perimeter, in an area restricted from general resident access.
- Have its own perimeter to ensure restricted access.

A waiting area shall be located at the entrance to the medical facility that is under the direct supervision of custodial staffs and not medical staff. A resident toilet and drinking fountain shall be accessible from the waiting area.

b. Medical Records

Medical records shall be kept separate from residents' residential records, and stored in a securely locked area within the medical unit.

c. Medical Housing

If there is a specific area, separate from other housing areas, where residents are admitted for health observation and care under the supervision and direction of health care personnel, the following minimum standards shall be met:

1). Care

- A clearly defined scope of care services available.
- A physician on call or available 24 hours per day.
- Health care personnel have access to a physician or registered nurse and are on duty 24 hours per day when patients are present.
- All patients within sight or sound of a staff member.
- A care manual that includes nursing care procedures.
- A housing record that is a separate and distinct section of the complete medical record.
- Compliance with applicable federal and state statutes and local licensing requirements.

2). Wash Basins, Bathing Facilities, and Toilets

- Residents have access to operable washbasins with hot and cold running water at a minimum ratio of one for every 12 occupants, unless state or local building codes specify a different ratio.
- Sufficient bathing facilities are provided to allow residents to bathe daily, and at least one bathing area is configured and equipped to accommodate residents with physical impairments or who need assistance to bathe. Water is thermostatically controlled to temperatures ranging from 100° F to 120° F degrees.
- Residents have access to toilets and hand-washing facilities 24 hours per day and are able to use toilet facilities without staff assistance. Unless state or local building or health codes specify otherwise:
    - Toilets are provided at a minimum ratio of one to every 12

residents in male toilet facilities and one for every 8 in female toilet facilities.

- All housing units with three or more residents have a minimum of two toilets.

5. Pharmaceutical Management

Each facility shall have written policy and procedures for the management of pharmaceuticals that include:

- A formulary of all prescription and nonprescription medicines stocked or routinely procured from outside sources.
- A method for obtaining medicines not on the formulary.
- Prescription practices, including requirements that medications are prescribed only when clinically indicated, and those prescriptions are reviewed before being renewed.
- Procurement, receipt, distribution, storage, dispensing, administration, and disposal of medications.
- Secure storage and perpetual inventory of all controlled substances (DEA Schedule II-V), syringes, and needles.

  All pharmaceuticals shall be stored in a secure area with the following features:

  - A secure perimeter
  - Access limited to authorized medical staff (never residents)
  - Solid walls from floor to ceiling and a solid ceiling
  - A solid core entrance door with a high security lock (with no other access)
  - A secure medication storage area

  The pharmacy shall also have a locking pass-through window.
- Administration and management in accordance with state and federal law.
- Supervision by properly licensed personnel.
- Administration of medications by personnel properly trained, and under the supervision of the health services administrator, or equivalent.
- Accountability for administering or distributing medications in a timely manner and according to physician orders.

6. Nonprescription Medications

Generally, all medications expected to be used by residents shall be approved by the medical department. Residents may, as needed, have access to general over the counter medications such as Tylenol, Motrin, or other nonprescription medications. Because children are routinely present in a family residential facility, care must be taken to provide lockable boxes or locations within each housing area to secure nonprescription medications that may be used by residents.

7. Medical Personnel

All health care staff shall have valid professional licenses and/or certifications. DIHS shall be consulted to determine the appropriate credentials requirements for health care providers.

Medical personnel credentialing and verification shall comply with the standards established by JCAHO.

8. Medical Screening of New Arrivals

a. Medical Screening

Immediately upon their arrival, all newly admitted residents shall receive initial medical and mental health screening by a health care provider.

Screening shall include observation and interview items related to the resident's potential suicide risk and possible mental disabilities. For further information, see the Residential Standard on **"Suicide Prevention and Intervention."**

If at any time during the screening process there is an indication of, or request for, mental health services, the health authority must be notified within 24 hours to assess whether a full mental health evaluation is indicated. See the section on **Mental Health Program** below.

To the extent practicable, medical and mental health interviews and examinations shall be conducted in settings that respect residents' privacy.

If language difficulties prevent the health care staff from sufficiently communicating with the resident complete the intake screening, the staff shall obtain interpreter assistance.

- Such assistance may be provided by another staff or by a professional service, such as a telephone interpreter service.
- Only in emergency situations may a resident be used for interpreter

assistance, and then only if the interpreter is proficient and reliable, and only with the consent of the resident being screened.

- During in-processing and prior to the resident's placement in a housing unit, the health care provider shall complete the Intake Screening form I-794 (or facility equivalent) and record all findings of the medical screening process.

b. Physical Exam

Each facility's health care provider shall conduct a physical examination on each adult resident within 7 days of arrival, and on each minor within 24 hours of arrival. Medical and mental health interviews, examinations, and procedures shall be conducted in settings that respect residents' privacy. All female residents should be provided with a female escort for medical examinations with male health care providers.

Residents diagnosed with a communicable disease shall be isolated according to local medical procedures.

c. Tuberculosis Screening

All new arrivals shall receive TB screening in accordance with guidelines of the Centers for Disease Control (CDC). A chest x-ray is the primary screening method. The PPD (mantoux method) shall be the secondary screening method.

Residents with symptoms suggestive of active TB shall be placed in a negative pressure isolation room and promptly evaluated for TB disease.

Also see the earlier section on **Communicable Diseases and Infection Control**, specifically the **Additional Requirements Regarding Tuberculosis**.

d. Substance Abuse and Dependence

All residents shall be evaluated through the initial intake screening for their use of or dependence on mood and mind-altering substances – such alcohol, opiates, hypnotics, sedatives, etc., that were not administered under a doctor's care. Any resident determined to be abusing or dependent on such substances will not be admitted to a family residential facility.

9. Mental Health Program

a. Mental Health Services Required

Each facility shall have an in-house or contractual mental health program,

approved by the appropriate medical authority that provides:

- Intake screening for mental health or illness
- Referral, as needed, for detection, diagnosis, and treatment of mental conditions
- Crisis intervention and management of acute mental health episodes
- Stabilization of mentally ill residents and prevention of psychiatric deterioration while confined
- Transfer of residents whose mental health needs exceed the capability of the facility, to a facility with the capacity to meet those needs.

b. Mental Health Provider

The term "mental health provider" includes a psychiatrist, psychologist, social worker and other mental health practitioner.

c. Mental Health Screening

Newly admitted residents are to receive initial mental health screening by a health care provider as part of the overall medical intake screening. If there is indication of a thought or mood disorder, a referral shall be made to the mental health provider using form DIHS 812-1.

Screening is done prior to the resident's placement in a housing unit.

d. Mental Health Examinations and Appraisal

Based on in-processing screening, medical documentation, or subsequent observations by residential staff or medical personnel, the health authority shall immediately refer any resident who has or may have an acute or chronic mental illness or disability to a mental health provider for a mental health examination and appraisal.

Such examinations and appraisals shall:

- Review available documentation regarding such factors as mental health treatment, psychotropic medications, drug or alcohol treatment, and sexual abuse victimization.
- Review available documentation regarding predatory behavior.
- Assess for any differential diagnoses, such as pertinent physical

conditions, head traumas, or organic brain disorders.

- Assess the resident's current mental health status and condition; suicide and violence potential; and drug and alcohol abuse or addiction.
- Recommend an appropriate level of care, for example:
  - Remain in general population with appropriate treatment plan.
  - Transfer to a facility with the capacity to meet the needs of patients who cannot reside in a general population.
  - Short-term community hospitalization until a plan for the placement of the patient and remaining family members can be implemented.
- Recommend and/or implement a treatment plan, including such matters as transfer, housing, voluntary work, and other program participation.

e. Referrals and Treatment

Any resident referred for mental health treatment shall receive a comprehensive evaluation by a licensed mental health provider, as soon as possible and no later than 14 days.

The provider shall develop an overall treatment and management plan, which may include transfer to a mental health facility if the resident's mental illness or developmental disability needs exceed the treatment capability of the facility.

The medical authority shall ensure due process in compliance with applicable federal, state, and local laws prior to a transfer.

f. At Risk Residents

Residents who have been identified as posing a continuing risk to themselves or others shall be removed from a family residential facility and placed in an appropriate facility.

g. Restraints

Restraints for medical or mental health purposes may be authorized only by a qualified medical or mental health provider, after reaching the conclusion that less restrictive measures are not successful. The facility shall have written procedures that specify:

- The conditions under which restraints may be applied

- The types of restraints to be used
- How a resident in restraints is to be monitored
- The length of time restraints are to be applied
- Requirements for documentation, including efforts to use less restrictive alternatives
- After-incident review

In all facilities, the medical authority or mental health provider shall complete a Post-Restraints Observation Report.

h. Involuntary Administration of Psychotropic Medications

Involuntary administration of psychotropic medications will only occur under the care of a physician at a hospital or alternative medical facility appropriate to the needs of the resident.

The medical provider will provide emergency medical treatment to a resident who presents a risk to himself or others. The medical provider will not provide medical treatment to a resident solely for the purposes of restraint, unless a medical professional determines that they present a danger to themselves or to others.

If a resident is likely to present a safely concern to DRO or facility personnel ,the Field Office should work with their Chief Counsel Office and the U.S. Attorney's Office to obtain a court order to authorize involuntary medical treatment to facilitate the removal process.

i. Telepsychiatry

Telepsychiatry is the use of electronic communication and information technology to provide or support clinical care at a distance. For telepsychiatry consultation, informed consent from the resident is required, just as would be required for a face-to-face encounter with a mental health provider. See the section on **Informed Consent and Forced Treatment** later in this Residential Standard.

If telepsychiatry services are offered, the facility's medical authority shall have written procedures that cover such matters as authorization, resident consent, refusal of treatment (including premature termination of an interview), communication arrangements, resident privacy, medical records documentation, and follow-up.

10. Periodic Health Examinations

The clinical director or health services administrator (or their equivalents) may determine that residents not covered below in the section on **Special Needs and Close Medical Supervision** are to be scheduled for periodic routine medical examinations (annually, for example).

11. Dental Treatment

An initial dental screening exam should be performed within 14 days of the resident's arrival. The initial dental screening may be performed by a physician, physician's assistant, or nurse practitioner - if trained by a licensed dentist.

Residents shall be afforded only authorized dental treatment (in accordance with the DIHS dental benefits package):

- **Emergency dental treatment** shall be provided for:
  - Immediate relief of pain, trauma, and acute oral infection that endangers the health of the resident, and
  - Repair of prosthetic appliances when there is adequate documentation supporting the inability of the resident to maintain reasonable caloric intake.

Routine dental treatment may be provided to residents for whom dental treatment is inaccessible for prolonged periods of confinement, including amalgam and composite restorations, prophylaxis, selected root canals, extractions, x-rays, the repair and adjustment of prosthetic appliances, and other procedures required to maintain the

resident's health. Accessory dental treatment is not provided which includes: fixed prosthodontics (crowns, implants, etc), fabrication of complete and partial dentures, or orthodontic treatment.

12. Sick Call

Each facility shall have:

- Regularly scheduled "sick call" times when medical personnel are available to see residents who have requested medical services.
- A procedure that allows residents the opportunity to request health care services (including mental health services) provided by qualified medical staff in a clinical setting.

If the procedure is a written request slip, they shall be provided in English and the most common languages spoken by the resident population of that facility. If necessary, residents, especially those illiterate or non-English speaking, shall be provided assistance to complete a request slip.

Request slips shall be:

- Freely available for residents to request health care services on a daily basis
- In English and the foreign languages most widely spoken among the residents
- Be completed by the resident or a minor's parent or guardian
- Contain the resident's name, A-number (or other facility ID number), gender, age, and reason for requesting a medical appointment
- Be dated and signed by the resident or a minor's parent or guardian.

All facilities must have a procedure in place to ensure that request slips are received by the medical department the same day that the resident submits the request, or no later than the following morning. For an urgent situation, the housing unit staff or other staff (such as a work detail supervisor) shall call the medical department or refer the matter to a staff supervisor.

The designated health care provider shall review the request slips and determine when the resident will be seen.

Sick call shall be held 7 days a week during regular working hours, except federal holidays.

All facilities shall maintain a permanent record of all sick call requests. The health

authority in DIHS-staffed facilities shall maintain sick call records within the resident's file.

13. 24-Hour Emergency Medical Treatment

Each facility shall have a plan for the delivery of 24-hour emergency health care when immediate outside medical attention is required.

A plan shall be prepared in consultation with the facility's routine medical provider, to include:

- An on-call provider;
- A list, available to all staff, of telephone numbers for local ambulances and hospital services

14. First Aid and Medical Emergencies

In each residential facility, the designated health authority and facility administrator shall determine the contents, number, location(s), use protocols, and monthly inspections procedures of first aid kits.

An automatic external defibrillator should be available for use at the facility.

Residential staff shall be trained at least annually to respond to health-related emergencies within four minutes of notification. The training shall be provided by a responsible medical authority in cooperation with the facility administrator and shall include:

a. Recognizing of signs of potential health emergencies and the required responses.

b. Administering first aid and cardiopulmonary resuscitation (CPR).

c. Obtaining emergency medical assistance through the facility plan and its required procedures.

d. Recognizing signs and symptoms of mental illness, suicide risk, retardation, and chemical dependency.

e. The facility's established plan and procedures for providing emergency medical care including the safe and secure transfer of residents for appropriate hospital or other medical services, such as by ambulance when indicated. The plan must provide for expedited entrance to and exit from the facility.

When an employee is unsure whether emergency care is required, he or she shall immediately notify the on-duty supervisor, and if the supervisor has any doubt about whether emergency care is required, he or she shall immediately contact a health care provider to make the determination.

15. Delivery of Medication

Distribution or administration of medication shall be in accordance with specific instructions and procedures established by the health care provider. Written records of all medication given to residents shall be maintained.

Medication may not be delivered or administered by residents.

16. Health Education and Wellness Information

The health authority shall provide residents with education and wellness information on such topics as self medication dangers, personal hygiene and dental care, prevention of communicable diseases, smoking cessation, family planning, self care for chronic conditions, self examination, and the benefits of physical fitness.

17. Special Needs and Close Medical Supervision

The medical care provider for each facility shall notify the ICE facility administrator in writing when a resident has been diagnosed as having a medical or psychiatric condition requiring special attention. Such conditions may include, for example, chronic illness, mental illness, physical disability, pregnancy, special diet, medical isolation, HIV/AIDS, etc.

When a resident has been diagnosed as having a medical or psychiatric condition requiring special attention, the medical care provider shall notify the facility administrator via a Resident Special Need(s) Form I-819 or similar form.

When a resident requires close medical supervision, including chronic and convalescent care, a treatment plan that includes directions to health care and other personnel regarding care and supervision shall be developed and approved by the appropriate physician, dentist, or mental health practitioner.

Female residents shall have access to pregnancy testing. Pregnant females will have access to pregnancy management services that include routine prenatal care, counseling and assistance, nutrition, and postpartum follow-up.

Exercise areas will be available to meet exercise and physical therapy requirements of individual's treatment plans.

18. HIV/AIDS

An HIV/AIDS diagnosis may be made only by a licensed physician, based on a medical history, current clinical evaluation of signs and symptoms, and laboratory studies.

a, Clinical Evaluation

When current symptoms are suggestive of HIV/AIDS infection, the following shall be implemented:

1). Clinical evaluation shall determine the medical need for isolation.

The health authority shall not recommend to ICE/DRO that the resident be separated from the general population, either pending a test result or after a test report, unless clinical evaluation reveals a medical need for isolation.

2). Following a clinical evaluation, if a resident manifests symptoms requiring treatment beyond the facility's capability, the provider shall recommend resident transfer to a hospital or other appropriate facility for further medical testing, final diagnosis, and acute treatment as needed, consistent with local medical procedures.

3). Any resident with active tuberculosis should also be evaluated for possible HIV/AIDS infection.

4). An HIV positive diagnosis must be reported to government bodies according to state and federal requirements. Reports of AIDS, and not HIV infection, are required by the CDC. State laws differ considerably, and the clinical director is responsible for ensuring that all applicable state requirements are met.

b. Exposure

Exposure of a resident to potentially infectious body fluids, such as needle sticks or bites, shall be reported as soon as possible to the clinical director.

Staff exposed to potentially infectious body fluids should seek medical assistance and report the incident as soon as possible to the clinical director.

c. Precautions

All residents should be assumed to be infectious for blood-borne pathogens, and standard ("universal") precautions are to be used at all times when caring for all residents. No additional special precautions are required for the care of HIV positive residents.

The **Standard Precautions** section of the Residential Standard on **"Environmental Health and Safety"** provides more detailed information.

19. Informed Consent and Forced Treatment

As a rule, medical treatment shall not be administered against a resident's will.

- Except in emergency circumstances, the facility health care provider shall obtain signed and dated consent forms from all residents, parents or guardians before administering any special medical procedures not delineated in the general consent form signed upon admission.
- Informed consent standards of the jurisdiction shall be observed, and consent forms shall either be in a language understood by the resident, or interpreter assistance shall be provided and documented on the form.

  If the resident refuses to consent to treatment, medical staff shall make reasonable efforts to convince the resident to voluntarily accept treatment.

  - Medical staff shall explain the medical risks if treatment is declined and shall document their efforts and the refusal of treatment in the resident's medical record.
  - When recommended by the medical staff, a resident who refuses examination or treatment may be removed from the facility if his or her refusal poses a risk to the general population, staff and visitors.
  - Forced medical treatment shall not be conducted at family facilities. (See section on **Special Provisions for Care of Children**).
  - In the event of a hunger strike, see the Residential Standard on "**Hunger Strikes**."

The Residential Standard on **"Terminal Illness, Advance Directives, and Death"** provides details regarding living wills and advance directives, organ donations, and "do-not-resuscitate" orders.

20. Special provisions for care of children

Medical Care of Children (infant to 11 years)

Each child upon arrival at the facility will be enrolled in a Well Baby or Well Child Clinic. The physical exam and periodic well-child checks will follow the same format each visit. These exams shall be documented on the DIHS Pediatric Physical Assessment Form. These exams will start with the initial visit, then follow at regular intervals as follows: 2 to 4 weeks of age; 2 months old; 4 months; 6 months; 9 months; 12 months; 15 months; 18 months; 2 years; then annually from 3 to 10 years of age. At 11 years of age, the assessment will be documented on the adult physical exam sheet.

The format for the exams is the same at each age level but will put emphasis on the differences for each age group, and will include the following.

1. Developmental Tasks
   - Physical
   - Behavioral
   - Mental
2. Diet and Nutrition
   - Adequate
   - Appropriate for age/development
3. Immunizations
   - Up to date
   - Documentation
4. Subjective Data: includes previous medical history, any current medical problems, medications, and allergies
5. Objective Data:
   a. Vital signs: includes blood pressure, temperature, pulse, respirations, height and weight. In children up to 23 months this will also include head circumference.
   b. Physical exam, head to toe, to include dental health
6. Assessment: shall include a discussion of findings with the parent or guardian.
7. Plan: includes timing of follow up, medications and laboratory tests (if indicated), referral to next level of care (if indicated), and next exam.
8. Anticipatory guidance: instructions to parents on what to expect in their child's development and how to deal with changes in a residential setting. Includes injury prevention, nutrition, educating child.

9. Child and parent education regarding dental hygiene, use of any medications, follow-up, and sick call procedures

Medical Care of Adolescents (12 to 18 years)

In addition to the above exam process, the adolescent exam shall include a special emphasis on preventive services in order to reduce serious morbidity and premature mortality. The five categories included in preventive services screening and counseling will include:

1. Screening for risk factors for injury, chronic illness, and need for immunizations

   Counseling about the following to reduce health risks:

   - Cardiovascular diseases
   - Smoking cessation
   - Obesity/Nutrition
   - Hypertension
   - Hyperlipidemia

2. Counseling regarding health risk behaviors:
   - Alcohol and drug use
   - Sexually Transmitted Diseases (age-appropriate)
3. Immunizations against HPV and Meningococcal meningitis
4. General health guidance and recommendation for frequency of health visits
5. Dental health.

   Anticipatory Guidance for parents of adolescents will include but not be exclusive to:

   - Appropriate parental decisions
   - Adapting parental practices to meet changing needs of the child and the family
   - Health guidance throughout child-rearing spectrum

21. Medical Records

a. Health Record File

The health authority shall maintain a complete health record file on each resident that is:

- Organized uniformly in accordance with recognized medical records standards.
- Available to all practitioners and used for all health care documentation.
- Properly maintained and safeguarded in a securely locked area within the medical unit.

b. Confidentiality and Release of Medical Records

All medical providers shall protect the privacy of resident's medical information to the extent possible, while permitting the exchange of health information required to fulfill program responsibilities and to provide for the well-being of residents. These protections apply not only to records maintained on paper, but also to electronic records.

In general, information about resident's health status is confidential, and the active medical record shall be maintained separately from other residential records and be accessible in accordance with sound medical practice and applicable laws.

The health authority shall, however, provide the facility administrator and designated staff information that is necessary:

- To preserve the health and safety of the resident, other residents, staff, or any other person.
- For such administrative and residential decisions as housing, voluntary work assignments, security, and transport.
- For such management purposes as audits and inspections.

When information is covered by the Health Information Privacy Act (HIPA), specific legal restrictions govern the release of medical information or records.

Copies of health records may be released by the facility health care provider directly to a resident or any person designated by the resident, upon receipt by the facility health care provider of a written authorization from the resident. Form I-813 may be used for this purpose.

In absence of an I-813 Form, a written request may serve as authorization for the release of health information, as long as it includes the following (and meets any other requirements of the facility health care provider):

- Address of the facility to release the information
- Name of the individual or institution to receive the information
- Resident's full name, A-number (or other facility identification number), date of birth, and nationality
- Purpose or need for the release
- Nature of the information to be released with inclusive dates of treatment
- Resident's signature and date

Following the release of health information, the written authorization shall be retained in the health record.

Facilities are required to notify JFRMU each time a resident's medical records are released.

Residents who indicate they wish to obtain copies of their medical records shall be provided with the appropriate form. The facility staff shall provide the resident with basic assistance in making the written request (if needed), and assist in transmitting the request to the facility health care provider.

If facility staff receives a request for a resident's medical records:

- The request shall be forwarded to the facility health care provider, or
- The requester (if other than the resident) shall be advised to redirect the request and be provided with the appropriate name and address.

c. Inactive Health Record Files

Inactive health record files shall be retained as permanent records in compliance with DIHS established procedures.

22.. Transfer and Release of Residents

ICE/DRO shall make appropriate notifications to the facility and medical staff when residents are to be transferred or released.

Medical/Psychiatric Alert. Medical staff shall notify the facility administrator in writing when they determine that a resident's medical or psychiatric condition requires:

- Clearance by the medical staff prior to release or transfer, or
- Medical escort during removal or transfer.

Notification of Transfers, Releases, and Removals. The facility health care provider shall be given advance notice prior to the release, transfer, or removal of a resident, so that medical staff may determine and provide for any medical needs associated with the transfer or release.

Transfer of Health Records. In advance of a resident's transfer, the resident's medical records or copies shall be mailed to the receiving facility's medical department in a sealed envelope or other container, labeled with the resident's name and A-number and marked "MEDICAL CONFIDENTIAL." The medical records are to arrive at the receiving facility in advance of the resident's arrival.

Immunization records of a minor shall be provided to the parent or guardian upon release. Other requirements for the transfer of records are contained in the Residential Standard on **"Transfers of Residents."**

23. Terminal Illness, Fatal Injury, or Death of a Resident

Procedures to be followed in the event of a resident's terminal illness, fatal injury, or death are in the Residential Standard on **"Terminal Illness, Advance Directives, and Death."** That Residential Standard also addresses resident organ donations.

24. Medical Experimentation

Residents may not participate in medical, pharmaceutical or cosmetic experiments or research.

25. Administration of the Medical Department

Quarterly Administrative Meetings

The facility administrator and health services administrator shall meet at least quarterly and include other facility and medical staff as appropriate.

The meeting agenda shall include, at a minimum:

a. An account of the effectiveness of the facility health care program

b. Discussions of health environment factors that may need improvement

c. Review and discussion of communicable disease and infectious control activities

d. Changes effected since the previous meetings

e. Any necessary recommended corrective actions

Minutes of each meeting shall be recorded and kept on file.

Health Care Internal Review and Quality Assurance

The health authority shall implement a system of internal review and quality assurance. Elements of the system shall include:

- Participating in a multidisciplinary quality improvement committee.
- Collecting and analyzing data combined with planning, intervening, and reassessing.
- Evaluating defined data.
- On-site monitoring of health service outcomes on a regular basis through:

a. Chart reviews by the responsible physician or his or her designee, including investigation of complaints and quality of health records.

b. Review of prescribing practices and administration of medication practices.

c. Systematic investigation of complaints and grievances.

d. Monitoring of corrective action plans.

e. Reviewing all deaths, suicide attempts, and illness outbreaks.

f. Developing and implementing corrective action plans to address and resolve identified problems and concerns.

g. Re-evaluating problems or concerns to determine whether the corrective measures have achieved and sustained the desired results.

h. Incorporating findings of internal review activities into the organization's educational and training activities.

i. Maintaining appropriate records of internal review activities.

j. Issuing a quarterly report to the health services administrator and facility administrator of the findings of internal review activities.

k. Ensuring records of internal review activities comply with legal requirements on confidentiality of records.

Peer Review

The health authority shall implement an external peer review program for physicians, mental health professionals, and dentists, with reviews conducted at least every two years.

26. Examinations by Independent Medical Service Providers and Experts

On occasion, medical and/or mental health examinations by a practitioner or expert not associated with ICE/DRO or the facility may provide a resident with information useful in administrative proceedings before the Executive Office for Immigration Review and ICE/DRO.

If a resident seeks an independent medical or mental health examination, the resident or his or her legal representative shall submit to the JFRMU a written request that details the reasons for such an examination. The Chief JFRMU shall approve the examination, as long as it would not present an unreasonable security risk. If a request is denied, the JFRMU shall advise the requester in writing of the rationale.

Neither ICE/DRO nor the facility may assume any costs of the examination, which shall be at the resident's expense. The facility shall provide a location for the examination but no medical equipment or supplies, and the examination must be arranged and conducted in a manner consistent with security and good order.

Should the independent examination result in treatment recommendations that would involve increased costs or services not covered by DIHS policy, the facility's medical authority shall consult with DIHS.

Standard Approved:

_____ _____

John P. Torres **Date**
Director
Office of Detention and Removal

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Standard Approved:

DEC 2 1 2007

John P. Torres
Director
Office of Detention and Removal

Date

U.S. Immigration and Customs Enforcement

Independent Medical Service Provider and Expert Request

Family Residential Center:

☐ Karnes County Residential Center (Karnes City, Texas)

☐ South Texas Family Residential Center (Dilley, Texas)

Definition:

As per "Legal Access and Legal Visitation Standard Operating Procedures" for ICE Directive 11302 Section 3:
Independent Medical Provider/Expert – *An individual who is licensed or otherwise authorized by a state to provide medical or mental health care services, including but not limited to physicians, registered professional nurses, and licensed social workers. Such individuals are not permitted to provide medical or mental health care services to residents, but may be permitted to evaluate individual residents for purposes of preparing expert reports.*

Legal representative (attorney of record) must submit request packet via email: Norma.E.Lacy@ice.dhs.gov.
*San Antonio Field Office Special Assistant Norma E. Lacy (Contact: 210-283-4711)

Request packet must be submitted for each resident individually to include the following upon submission, at a minimum:

Name:_____ Title:_____

DOB:_____ SS#:_____ Proposed date/time of evaluation:_____

☐ Request (complete) ☐ Government issued identification

☐ Letter of intent (Written request that details the reasons for such an examination)

☐ Credentials ☐ G-28 signed (Attorney of record Attorney name, email

☐ Date request submitted:_____

☐ Additional information:_____

Pre-Screening Requirements for Designation of Independent Medical Service Providers and Experts

For safety and security of Family Residential Center (FRC) residents and staff, FRCs will require all prospective Legal Visitors (Independent Medical Service Provider or Expert) to pass pre-clearance/record checks seventy-two (72) hours prior to the scheduled visit. The pre-clearance/record checks will include, but not limited to: identity verification, current employment or educational status, certification of medical license, and arrest and criminal history, underlying the applicant's request for medical visitor designation.

☐ Approved ☐ Denied

Deciding Official:_____ Date:_____

Effective 01/27/16; approval authority for the clearance process of the Independent Medical Service Providers and Experts for the Family Residential Centers (FRCs) now resides with the respective Field Office Director or designee.

Enforcement and Removal Operations

U.S. Department of Homeland Security
1777 NE Loop 410, Suite 1500
San Antonio, TX 78217

U.S. Immigration and Customs Enforcement

Ms. Caroline Perris
Paralegal, CARA *Pro Bono* Project
P.O. Box 18070
Dilley, TX 78017

MAR 17 2017

Re: Suspension of Visitation Privileges at the South Texas Family Residential Center (STFRC)

Dear Ms. Perris:

On January 12, 2017, you were granted access to the STFRC as a Paralegal, under the supervision of Ms. Shalyn Fluharty, Managing Attorney with the Cara *Pro Bono* Project. On March 3, 2017, you coordinated a mental health assessment of an STFRC resident without proper notification or approval. Section 4.3(V)(26) of the ICE Family Residential Standards (FRS) requires a resident or legal representative of that resident seeking an independent medical or mental health evaluation to submit the request for such evaluation in writing and in advance of the proposed evaluation to ICE ERO. The request will be evaluated by ICE's Juvenile and Family Residential and Management Unit (JFRMU) and cannot take place unless approved by JFRMU in advance of the evaluation. You did not seek the required approval prior to coordinating the mental health assessment of the resident. These actions are contrary to the safety, security, and good order of the facility and compromise operations at the STFRC.

Section 5.8(V)(6) of the FRS provides, "a visitor's failure to abide by visiting rules may result in immediate cancellation or termination of a visit and/or suspension of further visitation privileges." The visitation rules are clearly posted in the visitation trailer. You violated the posted rules prohibiting conduct that adversely impacts or threatens the safety, security, or good order of the facility. Therefore, your visitation privileges at the STFRC have been suspended. The complete FRS is publicly available https://www.ice.gov/detention-standards/family-residential should you desire to review these or any other standards.

Please contact Assistant Field Office Director Homer D. Salinas at (830) 378-6605 if you have any questions or concerns regarding this matter.

Sincerely,

for Daniel A. Bible
Field Office Director
San Antonio Field Office

From: Achim, Deborah <Deborah.Achim@ice.dhs.gov>
Date: Fri, May 12, 2017 at 10:01 AM
Subject: RE: Suspension Appeal_Caroline Perris
To: Shalyn Fluharty <shay@caraprobono.org>

Ms. Fluharty:

I am in receipt of your written request for the reinstatement of Ms. Caroline Perris' visitation privileges. As you are aware, the ERO Field Office Director denied the request to reinstate the visitation privileges of Mr. Ariel Prado and Ms. Elena Alderman in an e-mail message a few weeks ago. I cannot consider those requests.

I reviewed the request for Ms. Perris, and the basis of the request appears to be that your organization does not feel it is necessary to comply with policy set forth in the Family Residential Standards (FRS) regarding telephonic medical evaluations. We have allowed telephonic medical evaluations in the past in an effort to assist CARA. However, the fact that it has been done in the past does not excuse CARA from policy compliance at this time or in the future. In those cases, a request for a telephonic medical evaluation was made in advance of the evaluation, and the request was approved prior to the evaluation taking place. That is what is required by the FRS § 4.3(V)(26). Because your request to reinstate the visitation privileges of Ms. Perris also argues that you did request approval for the medical evaluation, I can only assume that you knew you would need approval prior to the evaluation taking place.

Originally I was told in an e-mail that Ms. Perris did not know the policy contained in the FRS. The attached letter seems to indicate that she knowingly ignored the FRS policy rather than speaking with ICE about the pending request. Ms. Perris clearly violated the FRS. In the past, similar actions have resulted in loss of visitation privileges.

As a reminder, legal correspondence should never be sent directly to Deportation Officers. It should be sent to the centralized e-mail box (STFRC-CARA-Requests@ice.dhs.gov) that was set up specifically for that purpose. The correspondence may also be hand-delivered to an ERO supervisor.

Your letter fails to acknowledge that the FRS policy was violated and actually states that you have no obligation to seek approval in the future, prior to facilitating an outside medical evaluation. Without assurance that your staff will comply with FRS policy regarding outside medical evaluations, work with ICE to receive the necessary approvals, and submit requests either through use of the designated legal e-mail box or by in-person submission of written requests, I will not reinstate Ms. Perris' visitation privileges.

I am always open to further discussion on this and any other matter.

Thank you,
Deborah Achim
DFOD ERO SNA