

Written Statement of Kevin Landy
Assistant Director for the ICE Office of Detention Policy and Planning (ODPP)
Before the United States Commission on Civil Rights
“The State of Civil Rights at Immigration Detention Facilities”
January 30, 2015

Chairman Castro, members of the United States Commission on Civil Rights, thank you for the opportunity to provide a statement on the detention reform initiatives that have been implemented at U.S. Immigration and Customs Enforcement (ICE). My name is Kevin Landy, and I am the Assistant Director for the ICE Office of Detention Policy and Planning (ODPP). ICE’s Office of Detention Policy and Planning was established in 2009 in order to help coordinate the agency’s efforts to reform the immigration detention system, in close collaboration with Enforcement and Removal Operations (ERO), other ICE components, and ICE Field Offices.

INTRODUCTION

ICE is the principal investigative arm of the U.S. Department of Homeland Security (DHS), created in 2003 through a merger of the U.S. Customs Service and the U.S. Immigration and Naturalization Service. At ICE, ERO is the principal component for enforcing the nation’s immigration laws in a fair and effective manner. ERO enforces the Nation’s immigration laws by identifying and apprehending removable aliens, detaining these individuals when necessary, and removing them from the United States.

The nation’s immigration detention system has expanded rapidly in the last 20 years – growing from an average daily population of less than 7,500 detainees in 1995 to over 33,000 in 2014. This growth has presented challenges for ICE, and in 2009 the DHS Secretary and ICE Director announced a broad long-term effort to reform the immigration detention system to ensure conditions of confinement consistent with the unique civil, rather than penal, authorities and purpose of immigration detention. ODPP was established to spearhead ICE’s detention reform initiative, both by implementing short-term improvements to immediately address existing concerns regarding the detention system and by identifying long-term improvements needed to further the agency’s civil detention priorities. These improvements included developing facilities more appropriate for the agency’s detained population, and improving conditions at existing facilities; using fewer facilities located closer to the location of apprehension, to reduce the number of people transferred away from their families, communities, and attorneys; ensuring that detainees received adequate medical and mental health care, and that detention facilities receive necessary Federal oversight. The agency’s reforms have produced concrete changes. This includes reforms related to ICE national detention standards, and the implementation of DHS PREA regulations, which I have been asked to speak about today.

PBNDS 2011

ICE’s most updated set of national detention standards is its 2011 Performance Based National Detention Standards (PBNDS 2011). In developing the revised standards, ICE incorporated the

input of many agency employees and stakeholders, including the perspectives of nongovernmental organizations and ICE field offices. These standards were designed to better tailor conditions of detention to the unique needs of immigration detainees and improve upon a number of safeguards and protections contained in earlier versions of detention standards, while maintaining a safe and secure environment for staff and detainees. Among other things, PBNDS 2011 improves medical and mental health services, increases access to legal services and religious opportunities, improves communication with detainees with limited English proficiency and disabilities, improves the process for reporting and responding to complaints, reinforces protections against sexual abuse and assault, strengthens protections for vulnerable populations (including, women, individuals with mental illness, and victims of abuse), increases recreation, and increases opportunities for communication with family, friends, and legal representatives through telephone access and visitation.

PBNDS 2011 currently applies to detention facilities housing approximately 60% of ICE's average daily detainee population, including all dedicated ICE facilities (that is, a facility that exclusively houses ICE detainees). The application of new detention standards at any given detention facility requires negotiation with the contractor or locality operating the facility, and execution of a separate contract modification incorporating the standards into the facility's agreement with ICE. The agency continues on an ongoing basis to pursue implementation of these standards at additional non-dedicated facilities, with priority given to those facilities housing the largest populations of ICE detainees and where contracting opportunities arise.

ICE's original National Detention Standards (NDS) were issued in 2000, in consultation with NGOs such as the American Bar Association, in order to establish consistent conditions of confinement, program operations, and management expectations across ICE's detention system. NDS currently applies to approximately 20% of ICE's average daily population, with half of those detainees housed at facilities contracting with, U.S. Marshals Service (USMS), within the Department of Justice. The remainder of ICE's detention facilities are governed by either the 2008 Performance-Based National Detention Standards (PBNDS 2008) or Family Residential Standards (FRS). PBNDS 2008 revised the NDS to improve detention standards related to environmental health and safety, food service, grievances, law libraries and legal materials, and medical care (among others), as well as to more clearly delineate the outcomes sought by its specific requirements. The FRS govern ICE's family residential centers, and promote a non-restrictive environment for detained family units emphasizing access to relevant social and medical services.

PREA

Even prior to the Department's issuance of its own PREA regulations, separate and apart from those issued by the Department of Justice, ICE had developed strong safeguards against sexual abuse or assault of its detainees in both agency policies and facility detention standards. ICE's 2008 and 2011 Performance-Based National Detention Standards incorporated responsibilities for all detention facility staff with respect to preventative measures such as screening, staff training, and detainee education, as well as effective response to all incidents of sexual abuse or assault, including timely reporting and notification, protection of victims, provision of medical and mental health care, investigation, and monitoring of incident data. In May 2012, ICE issued

an agency-wide directive on “Sexual Abuse and Assault Prevention and Intervention,” which established a zero-tolerance policy for sexual abuse and assault of all individuals in ICE custody, and outlined duties of agency employees for timely reporting, coordinating response and investigation, and effective monitoring of all incidents of sexual abuse or assault. The directive complemented requirements binding on detention facilities, in order to ensure an integrated and comprehensive system of responding to all incidents.

Pursuant to the 2012 ICE Directive, ICE appointed an agency-wide Prevention of Sexual Assault Coordinator, along with 62 ERO Field Office Prevention of Sexual Assault Coordinators. It also deployed comprehensive training on sexual abuse and assault prevention and intervention for all ICE employees who may have contact with detainees in the course of their duties, and developed detainee awareness and education materials on ICE sexual abuse policies.

In March 2014, DHS then promulgated its regulation under PREA, entitled “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities” (DHS PREA Rule). This rule consolidated and built upon existing agency policies and practices, outlining robust requirements for screening, training, detainee education, reporting, response, medical care, investigative protocols, discipline, and monitoring and oversight.

ICE is currently compliant with all of the requirements that are applicable to the agency under the DHS PREA Rule. In May 2014, ICE updated its original Directive on “Sexual Abuse and Assault Prevention and Intervention” to incorporate additional DHS PREA requirements. Among other things, the revised Directive adds new safeguards to prevent retaliation against those who report sexual abuse or who participate in a subsequent investigation, and defines procedures for facilitating the provision of victim services to detainee victims. ICE also promulgated a new ERO Policy on “Operations of ERO Holding Facilities” in September 2014, integrating PREA requirements specifically applicable to ICE holding facilities. While the agency’s requirements under the DHS PREA Rule are primarily addressed in these two policies, ICE has also made revisions to other policies and protocols as needed in order to incorporate all applicable PREA mandates. The DHS PREA Rule requires that training for all employees who may have contact with detainees be completed by May 6, 2015: ICE is currently in the process of updating its existing training to incorporate additional information required by the DHS PREA Rule, and anticipates deployment by the designated deadline. In addition, ICE is currently developing an electronic web-based system for tracking allegations and incidents of sexual abuse or assault, which will enhance the agency’s ability to effectively monitor investigations, respond to individual cases across various agency components, and conduct trend analysis.

The DHS PREA Rule also requires that all new, renewed, or substantively modified detention facility contracts incorporate the rule’s standards. At the current time, six immigration detention facilities are contractually bound to comply with the requirements outlined within the DHS PREA Rule, including all three of ICE’s family residential facilities. However, sexual assault safeguards contained in either the DHS PREA Rule or PBNDS 2011 apply to approximately 80% of the agency’s average daily population (this is approximately 95% of the agency’s average daily population when excluding those detainees who are held in USMS-contracted facilities, which are covered by the DOJ PREA regulations). Pursuant to a commitment made in the preamble to the DHS PREA Rule, ICE will also seek to implement all of its standards at all

dedicated ICE facilities within 18 months of the rule's effective date of May 6, 2014. Although not required by the DHS PREA Rule, ICE will also proactively pursue opportunities for incorporating the standards at a number of other non-dedicated detention facilities.

OTHER DETENTION REFORM INITIATIVES AND ACCOMPLISHMENTS

ICE has implemented a number of other reforms, in addition to those already mentioned, that were designed to ensure appropriate conditions of confinement at immigration detention facilities.

In January 2013, ICE completed nationwide deployment of a new automated Risk Classification Assessment (RCA). This tool improves transparency and uniformity in detention and custody classification decisions, aids in identifying vulnerable populations, and promotes the prioritization of detention resources. The RCA contains objective criteria, incorporating factors reflecting the agency's civil enforcement priorities and any special vulnerabilities that may affect custody and classification determinations, to guide the decision-making of ICE officers and their supervisors regarding whether an alien should be detained or released, and, if detained, the appropriate custody classification level.

In September 2013, ICE issued a Directive on the "Review of the Use of Segregation for ICE Detainees." This directive established procedures for the review and oversight of decisions to place ICE detainees in segregated housing for over 14 days, or placements in segregation for any length of time in the case of detainees for whom heightened concerns exist based on factors related to the detainee's health or other special vulnerabilities. The Directive requires facilities to report such cases promptly, and requires ICE Field Offices and headquarters to evaluate the appropriateness of continued placement and determine the viability of any potential housing or custodial alternatives. ICE Headquarters is able to obtain detailed information regarding segregation placements and review cases and coordinate recommendations as to the appropriateness of segregation or alternative options.

ICE has also enhanced oversight of detention facilities by establishing an On-Site Detention Compliance Oversight Program. This program is comprised of a corps of more than 40 new Federal Detention Service Managers (DSMs) posted at major detention facilities who, on an ongoing basis, inspect facilities to make sure they are complying with ICE detention standards, work with local ICE field offices to address concerns, and report problems identified to ICE headquarters. The program currently covers more than 80% of ICE's average daily population of detainees, and is being expanded to additional facilities.

ICE has also made great strides in reducing long distance transfers of detainees by increasing detention capacity where it is most needed. This ensures that detainees can remain close to their families and attorneys, and prevents disruptions to ongoing immigration proceedings, which had the effect of lengthening an alien's detention. In January 2012, ICE also issued a Transfer Directive that builds on the successful reduction of long-distance transfers, by ensuring that when transfers are necessary, they are prioritized to minimize the long-distance transfers of

detainees with family members, local attorneys, or pending immigration proceedings in the area where they are detained.

Other ICE reforms include: launching a Web-based detainee locator system that enables attorneys, family and friends to find a detainee in ICE custody and to access information about the facility; establishing a toll-free national Detention Reporting and Information Line to serve as an additional channel for detainees at all detention facilities to communicate directly with ERO; issuing guidance for new identification and information-sharing procedures related to unrepresented detainees with serious mental disorders or conditions; issuing a new Access Policy Directive, establishing procedures for stakeholders to tour and visit detention facilities; simplifying the process for detainees to receive authorized health care treatments and thereby improved accessibility of care, and deploying an electronic health records system at all detention facilities staffed by the ICE Health Service Corps, to enhance communication among facilities, and increase continuity of care.

CONCLUSION

I would like to thank the Commission again for its interest in immigration detention reforms, and for the opportunity to provide this statement.