



Best Practices for the Care of Transgender Noncitizens in Detention

Supplement to ICE Transgender Care Memorandum and Detention Facility Contract Modification for Transgender Care

U.S. Immigration and Customs Enforcement (ICE), Office of Enforcement and Removal Operations (ERO) is committed to providing a respectful and safe environment for all noncitizens in our custody, including those who identify as transgender and who are generally at a higher risk of victimization in detention. ICE ERO has identified several best practices that help ensure a more holistic approach to the care of the transgender noncitizen and the safety of the noncitizen, other noncitizens, and facility staff. These best practices are intended to supplement requirements set forth in the ICE ERO issued *Further Guidance Regarding the Care of Transgender Detainees (Transgender Care Memorandum)* and accompanying ICE Detention Facility Contract Modification for Transgender Care.

Note: ICE Transgender Care Memorandum policies and procedures apply regardless of when a detained noncitizen discloses their transgender identity.

CUSTODY CLASSIFICATION AND COMMUNICATION

Intake: The facility should update local data systems used to capture noncitizen information or develop a separate process, as needed, to record a noncitizen's self-identification as transgender. If at any time during the intake process facility staff determine additional privacy is needed, to the extent practicable, staff should make appropriate accommodations to converse with the noncitizen in private.

Staff Communication: All facility staff communication with a detained noncitizen should be conducted in a language and manner the noncitizen understands. Facility staff should interact with transgender noncitizens in a manner that is professional, respectful, and courteous. Facility staff should refer to transgender noncitizens by their preferred pronouns and chosen name, where known and applicable, to promote a respectful and stable environment. If common practice is to refer to noncitizens by last name, then facility staff may do so. The individual's preferred name and pronouns should be documented in their Individualized Detention Plan (see below) and detention file.

Privacy: A noncitizen's self-identification as transgender is considered sensitive information; it should not be shared with other noncitizens or staff who do not have a need to know the information and should not be used to the noncitizen's detriment.

INDIVIDUALIZED ASSESSMENT

Transgender Classification and Care Committee: The facility shall establish a Transgender Classification and Care Committee (TCCC) comprised of a facility medical and behavioral health representative (this may be two positions, one representing medical care and another representing behavioral health, should ERO and the facility desire); facility classification supervisor; the IHSC Field Medical Coordinator (FMC); ERO Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and Intersex (LGBTQI+) Field Liaison; and a supervisory representative designated by the Field Office



Director (FOD)- this person may also be the ERO LGBTQI+ Field Liaison.

The TCCC can also include other facility and ERO staff members as desired, including, where available, a contracted ERO Custody and Resource Coordinator (CRC). The TCCC shall be chaired jointly by a representative from the facility and an ERO representative, preferably the ERO LGBTQI+ Field Liaison.

Detainee Preferences and Requests: Any communication between facility representative(s) and a noncitizen should be in a language and manner the noncitizen can understand. During their initial meeting with the transgender noncitizen, the facility medical and/or behavioral health representative(s) and/or the contracted ERO CRC may choose to use the provided Determination Question Guide template (see Attachment 3) to record the noncitizen's preferences. If the facility chooses not to use this template, the facility shall record preferences using a template of their choice. A copy of the noncitizen's responses shall be kept in the noncitizen's detention file. The results of this interview, including the noncitizen's preferences and requests, should be shared during the TCCC meeting (see below).

TCCC Assessment Considerations: As part of the transgender classification assessment, the TCCC should, at a minimum, consider: the noncitizen's self-identification; record and available documentation, including forms and notes from initial processing, medical/behavioral health records, booking records, identification documents, etc.; and observations provided by medical or behavioral health representative(s), to include those based upon the latest Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for the diagnosis of Gender Dysphoria.

TCCC Individualized Detention Plan: Aside from safety or security concerns, the TCCC should try where feasible to accommodate the noncitizen's preferences. The facility may choose to use the provided Individualized Detention Plan (IDP) template (see Attachment 3) to record their decisions. If the facility chooses not to use this template, the facility shall record decisions using a template of their choice. The final IDP shall be forwarded to the facility classification supervisor soon after the TCCC meeting. A copy of the IDP should be kept in the noncitizen's detention file to be used for future reference and/or inquiries, as needed. A summary of the IDP should also be provided to the noncitizen. The facility may choose to use the provided Detention Plan- Noncitizen Summary template (see Attachment 3) or a template of their choice.

Housing: The TCCC shall generally consider housing the transgender noncitizen according to their preference, including by their gender identity, sex assigned at birth, in protective custody, or in an ICE dedicated housing unit for transgender noncitizens. Placement into administrative segregation due to a noncitizen's identification as transgender should be used only as a last resort and when no other housing option exists. When making the housing decision, the TCCC shall consider the safety and security of the noncitizen, other noncitizens, and the facility staff.

All detained transgender noncitizens should be provided with a reasonably private environment for bathing and toilet facilities, consistent with privacy and security considerations afforded to other noncitizens in detention. This is particularly important for this population, as some transgender noncitizens may have undergone surgical procedures as part of their transition.



SECURITY

Searches: Consistent with PBNDS 2011 and U.S. Department of Homeland Security (DHS) policies and standards, including the DHS Prison Rape Elimination Act (PREA), searches of transgender noncitizens shall be performed by an officer of the same gender/gender identity as the noncitizen (e.g., a transgender woman (male to female) should be searched by a female officer). Further, per PBNDS 2011, special care should be taken to ensure noncitizens are strip searched in private. As always, searches should be conducted in a professional and respectful way, in the least restrictive manner possible, and consistent with security needs. At no time shall any search be conducted solely for the purpose of determining a noncitizen's biological sex.

DETAINEE SERVICES AND CARE

Medical Care: Initial medical screening at the facility shall inquire into a noncitizen's gender self-identification and history of transition-related care. Further, transgender noncitizens who were already receiving hormone therapy when taken into ICE custody shall have continued access to such treatment; all transgender noncitizens shall have access to behavioral health care and other transgender-related health care and medication (including hormone therapy) based on medical need and eligibility (regardless of the level of services received or lack of services prior to detention). Any treatment shall follow accepted guidelines regarding medically necessary transition related care.

TRAINING, PROGRAMMING, AND RESOURCES

Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex + (LGBTQI+) Subject Matter Expert and Primary Point of Contact: The facility shall designate certain personnel as a resource to consult when transgender-related issues and needs arise. The name and contact information of the designated employee should be provided to ERO. ICE will also designate a local ERO field office liaison to serve as a resource for the facility. The name and contact information of the designated employee will be provided to the facility. The facility should coordinate questions and/or matters related to transgender noncitizens with the designated ERO field liaison.

Training: To ensure competency in their assigned duties, facility staff (including health care) who will interact with transgender detainees should receive specialized training geared toward this population. While ERO may provide in-person and/or webinar training related to transgender sensitivity and detainee care and specific instruction on the provisions of transgender care (to include applicable ICE standards and DHS PREA provisions), the facility shall provide applicable training to its staff, particularly health care staff and others assigned to work in unit where transgender noncitizens will be housed. ERO may also offer the facility a training DVD addressing medical care of transgender patients. The facility shall facilitate access for trainers to the facility grounds, as needed.

Custody and Resource Coordinator: As feasible, ERO will hire and assign a contracted Custody and Resource Coordinator (CRC) to the facility. The ERO CRC has a degree in social work, or related field, is fluent in Spanish, and is experienced in providing specialized services to vulnerable populations. The name and contact information of the contracted ERO CRC will be provided to the facility. The facility shall facilitate access for the ERO CRC to the facility grounds and noncitizens, as needed. ERO and



facility staff may also rely on the ERO CRC for various functions, including assisting noncitizens with removal or release planning, addressing facility concerns/questions about specific noncitizens, and conducting informal programming for detained noncitizens.

Transgender Programming: The facility shall provide the transgender population equal access to programming and services made available to other populations at the facility. In addition to programming provided by the facility, ERO may identify and engage with local non-government organization (NGO), academic, and other partners to provide programming suitable for the detained transgender population. ERO may also rely on the contracted CRC (if applicable) to conduct informal programming for this population. The facility should facilitate access for the ERO CRC and provider(s) to the facility grounds and noncitizens, as needed.