

ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

October 13, 2021

MEMORANDUM FOR: Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V** Digitally signed by
Inspector General **CUFFARI** JOSEPH V CUFFARI
Date: 2021.10.13
10:23:24 -07'00'

SUBJECT: *ICE Needs to Improve Its Oversight of
Segregation Use in Detention Facilities*

For your action is our final report, *ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities*. We incorporated the formal comments provided by your office.

The report contains three recommendations aimed at improving ICE's oversight and reporting of segregation use in detention facilities. Your office concurred with all three recommendations. Based on information provided in your response to the draft report, we consider all three recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Bruce Miller, Deputy Inspector General for Audits, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities

October 13, 2021

Why We Did This Audit

Congress and the public have expressed concerns regarding prolonged or excessive use of segregation at ICE detention facilities. Additionally, academic research has found segregation can have negative psychological effects, particularly for those with pre-existing mental illnesses and those with an established risk for suicide. We conducted this audit to determine whether ICE's use of administrative and disciplinary segregation across all authorized detention facilities complies with ICE detention standards.

What We Recommend

We made three recommendations to improve ICE's oversight and reporting the use of segregation at detention facilities.

For Further Information:
Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

U.S. Immigration and Customs Enforcement (ICE) did not always comply with segregation reporting requirements and did not ensure detention facilities complied with records retention requirements. In analyzing a statistical sample of detention files for fiscal years 2015 through 2019, we determined ICE did not:

- maintain evidence showing it considered alternatives to segregation for 72 percent of segregation placements;
- record 13 percent of the segregation placements as required; and
- ensure detention facilities complied with the National Archives and Records Administration's (NARA) retention schedules. According to ICE officials, 24 of 265 detention files were destroyed, which we found was done before NARA's minimum retention requirements.

These problems occurred because ICE does not have effective oversight and clear policies to ensure accurate and comprehensive tracking and reporting on the use of segregation, as well as proper record retention. In addition, ICE's own reporting policy prevents transparency with Congress and the public about the prevalence of segregation use. Without adequate oversight, clear policies, and comprehensive data, ICE does not know the full extent of detention facilities' use of segregation, which hinders its ability to ensure compliance with policy, and prevent and detect potential misuse of segregation.

ICE's Response

ICE concurred with all three recommendations.



Background

U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) is responsible for long-term detention of inadmissible adults and family units at more than 200 detention facilities nationwide.¹ If individuals cannot be safely detained as part of the general population, ICE will place detainees in segregation. In these cases, individuals are removed from the general population and held in isolation in Special Management Units.² (See Figure 1.)

There are limited Federal regulations for segregation use at immigration detention facilities. ICE developed the *Performance-Based National Detention Standards* (PBNDS)³ and updated the *National Detention Standards* (NDS)⁴ to facilitate consistent conditions of confinement, access to legal representation, and safe and secure operations across the detention system. ICE uses two forms of segregation: administrative and disciplinary segregation.⁵ According to ICE's 2011 PBNDS, facilities may place a detainee in administrative segregation when the detainee's continued presence in the general population poses a threat to life, property, self, staff, or other detainees; for the secure and orderly operation of the facility; or for medical reasons. According to ICE, administrative segregation is considered a non-punitive status and should be for the briefest term, under the least restrictive conditions practicable, and consistent with the rationale for placement. Generally, detainees in administrative segregation should receive the same privileges as detainees housed in the general population. Conversely, disciplinary segregation is punitive and can only be authorized by a



Figure 1. Photo of a Special Management Unit Cell

Source: Houston detention facility

¹ ERO works in conjunction with private contractors or state and local governments.

² In this report, we use the term segregation to describe ICE's Special Management Units.

³ The 2008 PBNDS was updated in 2011. ICE revised the 2011 PBNDS in 2016.

⁴ ICE's predecessor, the Immigration and Naturalization Service, developed the 2000 NDS. ICE updated the NDS in 2019.

⁵ Segregation conditions vary by facility. However, the 2011 PBNDS provides general standards. For example, facilities should provide detainees with showers at least three times a week; those in administrative segregation should receive at least 1 hour of recreation every day, and those in disciplinary segregation should receive an hour of recreation at least 5 days a week.



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disciplinary panel if a detainee violates facility rules. See Appendix B for a full list of ICE's segregation placement reasons and definitions.

In October 2013, ICE deployed the Segregation Review Management System (SRMS) as ERO's official system of record to record and track detainees placed in segregation. According to ICE's SRMS, ICE recorded a total of 13,784 segregation placements from fiscal years 2015 through 2019,⁶ of which 7,917 were categorized as administrative segregation and 5,867 as disciplinary segregation. During this same timeframe, the use of segregation generally increased. See Figure 2 for the total segregation placements by fiscal year.



Source: DHS OIG Analysis of SRMS Data

In 2013, ICE issued Directive 11065.1⁷ (Segregation Directive) to complement segregation requirements outlined in the PBNDS and NDS. The Segregation Directive highlighted the seriousness of using segregation in detention facilities. According to the Directive, placement in segregation should only occur when necessary and in compliance with applicable detention standards. Further, alternatives to segregation should be carefully considered. The Segregation

Directive also established additional reporting requirements for segregation placements longer than 14 consecutive days, and placements for any length of time involving a special vulnerability, such as a medical condition, physical and mental illness; a suicide risk; pregnant or postpartum; on a hunger strike; and detainees identifying as lesbian, gay, bisexual, trans or intersex (LGBTI). See Appendix C for a flowchart of ICE's segregation reporting requirements.

Once a detainee has been held in segregation based on the timeframes in the Segregation Directive, the facility notifies the appropriate ERO Field Office Director (FOD) of the segregation placement. Upon receipt, the FOD directs staff to input the information sent by the facility into SRMS. Figure 3 outlines the segregation reporting process. At the facility level, 82 of the 156 detention facilities we reviewed had developed informal segregation trackers. Some facilities have a daily tracker to track each day a detainee is housed in segregation, while other facilities use a running list to track the segregation placement and release date.

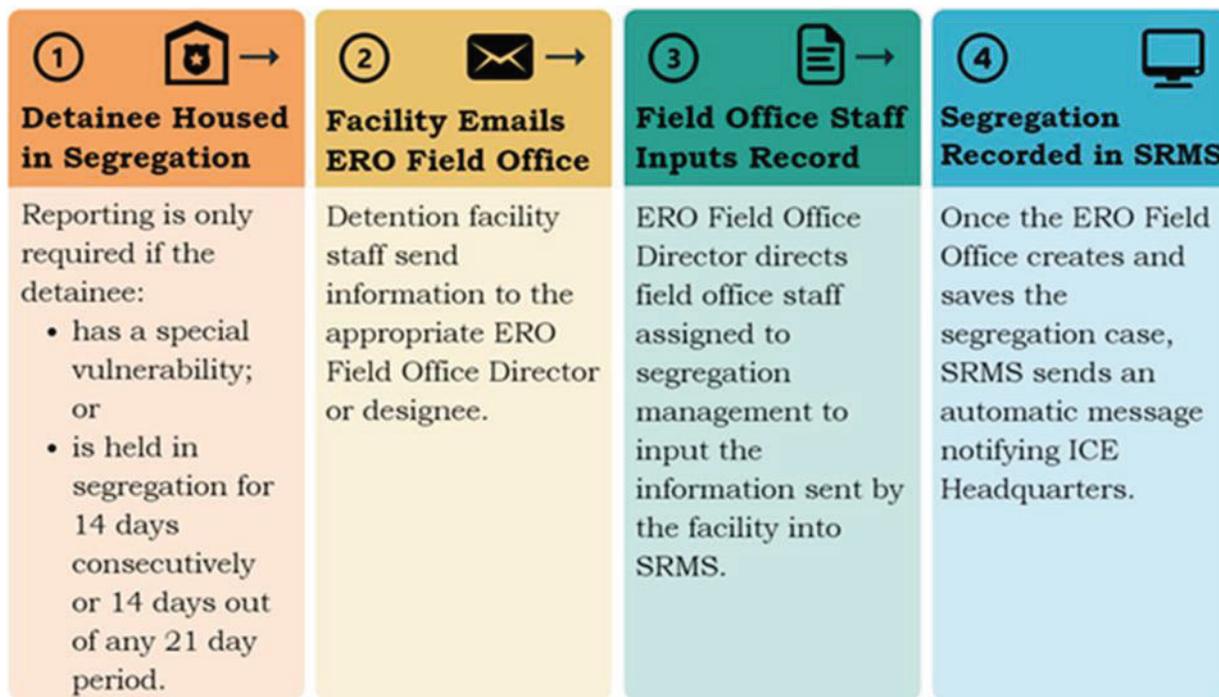
⁶ This is the scope of our review.

⁷ ICE Directive 11065.1, *Review of the Use of Segregation for ICE Detainees*, September 4, 2013.



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Figure 3. Segregation Reporting Process



Source: DHS Office of Inspector General (OIG) review of ICE’s SRMS Standard Operating Procedure (SOP) (DRAFT)

Congress⁸ and the public have expressed concerns regarding prolonged or excessive use of segregation at ICE detention facilities. From FY 2015 through FY 2019, the DHS OIG Hotline received 1,200 allegations related to concerns about segregation. The allegations were comprised of issues such as detainees not knowing why they were placed in segregation, detainees being denied conditions of confinement (not receiving medical attention, denied food, or denied access to showers), detainees being placed in segregation as retaliation, and detainees being threatened with segregation. In one such complaint, the detainee alleged that he was placed in segregation as retaliation for filing a report on an ICE officer for abuse.

Additionally, in unannounced inspections of ICE detention facilities, OIG inspectors have identified violations of ICE detention standards for segregation, including detainees held in administrative segregation for extended periods without proper documentation or reviews, detainees placed in disciplinary segregation prematurely or inappropriately, and detainees in segregation allowed little to no time outside their cells. During one inspection in particular, inspectors determined detainees were held in administrative segregation for prolonged periods of 22 to 23 hours a day, including two detainees who had

⁸ Hearing before the U.S. House of Representatives, Subcommittee on Oversight, Management, and Accountability of the Committee on Homeland Security: "Oversight of ICE Detention Facilities: Is DHS Doing Enough?" September 26, 2019.



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been held in segregation for more than 300 days. See Appendix D for a list of prior DHS OIG inspections findings related to segregation.

This is the first time OIG has conducted a systemic review on the oversight of detainees placed in segregation. We conducted this audit to determine whether ICE's use of administrative and disciplinary segregation across all authorized detention facilities complies with ICE detention standards.

Results of Audit

ICE Did Not Always Comply with Segregation Reporting Requirements and Did Not Ensure Detention Facilities Complied with Records Retention Requirements

First, we could not always determine whether ICE considered alternatives to segregation, as required by ICE policy.⁹ According to ICE's Segregation Directive, placing detainees in segregation is a "serious step that requires careful consideration of alternatives." Alternatives to segregation may include one or more of the following: denying a detainee access to the commissary; changing a detainee's housing, such as a release from custody or transfer to a hospital or another facility; removing a detainee from group activities; and removing a detainee's personal property. We analyzed a statistical sample of detention files for fiscal years 2015 through 2019.¹⁰ We found no evidence in the detention files we reviewed or in SRMS indicating ICE considered alternatives for 342 of 474 segregation placements (72 percent) in our statistical sample. For the remaining 132 placements, we did find evidence the facility may have considered or used alternatives to segregation. For example, we identified a statement in SRMS that a transfer to another facility better suited the detainee, but no alternate housing options were available. In another detention file, we identified documentation that a detainee with a mental illness was transferred outside the facility for medical observation.

ICE's Segregation Directive states "placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist." Through our analysis, we determined 246 of the 474 placements were categorized as administrative segregation. Of the 246, 154 indicated the detainee had a special vulnerability. In some detention

⁹ In this report, we use ICE policy to refer to ICE segregation standards detailed in the Segregation Directive, PBNDS, and NDS.

¹⁰ We selected a random statistical sample of 265 detainees' detention files, based on SRMS data. This resulted in 474 individual segregation placements, as some detainees were placed in segregation more than once. In total, 337 of these segregation placements were recorded in SRMS, while 75 were not because they were not required to be recorded under ICE's reporting requirements.



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files in our sample, detainees were noted as being LGBTI, on a hunger strike, suicidal, or as having a mental illness, such as schizophrenia or bipolar disorder. Due to the lack of documentation, we could not determine whether alternatives were considered for 101 of 154 (66 percent) special vulnerability cases.

Second, ICE did not always comply with its segregation reporting requirements. ICE requires detainees with a special vulnerability, or detainees held continuously in segregation for 14 days, be reported in SRMS. Segregation placements that do not meet these requirements do not have to be reported in SRMS. ICE uses SRMS to review and manage reported segregation placements to ensure they comply with its Segregation Directive. However, we compared the facilities' detention files with SRMS data and found no record of 62 of 474 (13 percent) segregation placements that should have been recorded in SRMS according to ICE policy.¹¹ For example, the following segregation placements were not recorded in SRMS, in violation of policy:

- A detainee with an unspecified mental illness was placed on suicide watch multiple times during 45 days of segregation.
- A detainee with schizophrenia spent 30 days in segregation.
- A detainee spent more than 66 days in segregation.

In addition to not recording all segregation placements, not all segregation placements were recorded in SRMS within the required timeframes. ICE's Segregation Directive requires facilities to notify ICE FODs no later than 3 business days after a detainee with a special vulnerability is placed into segregation¹² or after a continuous 14-day segregation placement for all other detainees. Of the 337 segregation placements recorded in SRMS, we determined 141 were recorded past the required timeframes. The following are examples ICE recorded in SRMS of segregation placements that exceeded required timeframes:

- A detainee with depression was in segregation for 4 days but was not recorded in SRMS until 428 days after release.
- A detainee's placement was not recorded in SRMS until 88 days into a 250-day segregation placement.
- A detainee was in segregation for 82 days but was not recorded in SRMS until 61 days into the placement.

¹¹ Due to the absence of documentation in the detention file or SRMS, we were unable to determine whether the detention facilities did not report these placements to ICE, or whether the facilities notified ICE of the placements, but ICE never recorded them in SRMS.

¹² This was clarified in *Expanded Guidance for Submitting Segregation Notifications*, an update to the 2013 Segregation Directive, dated January 6, 2017.



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Delays in segregation reporting could impact ICE's ability to mitigate possible misuse of segregation and prevent unnecessary, prolonged segregation placements.

Third, ICE did not ensure detention facilities always complied with Federal records retention requirements. During our audit, we requested detention files and segregation reports¹³ from 55 detention facilities. According to the National Archives and Records Administration (NARA), the agency responsible for Federal records scheduling,¹⁴ ICE must retain detention files for 6 years after a detainee's transfer or release from a facility and segregation reports for 7 years from the end of the fiscal year in which the detainee was released from segregation.¹⁵ For example, if a detainee was released from segregation in October 2014 (the beginning of our scope) and released from the facility the same month, a detainee's segregation orders, which are in the detention file, could not be destroyed until September 2022.¹⁶

ICE was unable to provide 32 of 265 detention files from our statistical sample. Specifically, according to ICE officials 24 of 265 detention files from our statistical sample were destroyed. These records were destroyed before NARA's minimum retention requirements. In addition, we could not obtain an additional eight detention files because, according to ICE and detention facility officials, "the files could not be found." Any Federal record destroyed contrary to a records schedule is unlawful.¹⁷ Unavailability of records can also prevent ICE from investigating cases of potential misuse or abuse of segregation. In addition, some cases, program audits, litigation, investigations, or other special circumstances may require the retention of records beyond their scheduled destruction date. In March 2020, ICE agreed to issue a litigation hold to not destroy records under Schedule No. DAA-0567-2015-0013 (Detainee Records), which includes detainee segregation reports and is effective for the length of the lawsuit, including appeals.¹⁸ Our review identified that 16 of the 24 detention files in our sample were destroyed in November 2020. We were unable to determine when the remaining files were destroyed.

¹³ Segregation reports document the placement of detainees in segregated housing, including reasons for segregation placement, compliance with applicable detention standards, alternative arrangements explored, and assessment of the best course of action.

¹⁴ The record schedule includes whether the records may be destroyed and how long they must be kept prior to destruction.

¹⁵ Schedule No. N1-567-11-014, *Detention Case Files* and Schedule No. DAA-0567-2015-0013-0008, *Detainee Segregation Reports*.

¹⁶ ICE's detention standards require the detainee's segregation orders, including all relevant documents, be added to the detention file upon the detainee's release from segregation.

¹⁷ 36 Code of Federal Regulations (C.F.R.) § 1230.3 and § 1230.12.

¹⁸ *Citizens for Responsibility and Ethics in Washington et al. v. National Archives and Records Management Administration et al.* Case No. 1:20-cv-739-APM (March 25, 2020).



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In March 2021, we notified ICE officials about the destruction of the detention files and about five facilities with 3-year retention policies, so they could take appropriate action. As of May 2021, ICE officials told us they had raised this issue “to senior leadership for the ICE Management and Administration directorate, as well as the Enforcement and Removal Operations directorate for further action.”

ICE Did Not Have Effective Oversight to Ensure Detention Facilities Consistently Track and Report the Use of Segregation

The deficiencies identified in our audit occurred, in part, because ICE does not have effective oversight to ensure detention facilities track and report segregation in compliance with ICE policy. ICE relies on facilities to self-report their use of segregation and has not developed a process to ensure facilities report segregation placements that meet its reporting requirements. Therefore, we have no assurance ICE’s segregation data in SRMS is complete and accurate. Specifically, when we compared 4,451 placements recorded in detention facilities’ segregation trackers to data in SRMS, we found instances of conflicting information. In 1,445 instances the placement date and/or release date differed. ICE relies on SRMS to ensure detention facilities’ use of segregation complies with the standards, and therefore, it is necessary that information being captured is complete and reliable.

Additionally, ICE relies on detention facility officials to develop their own tools and systems to track segregation at the facility level. Within the scope of our review, only 82 of the 156 detention facilities that hold detainees more than 72 hours were able to provide us with reviewable segregation trackers. Additionally, we found inconsistencies among the information collected and the formats used. Some facilities used Excel spreadsheets to track segregation, while others used Word documents or pdf format. Also, some facilities collected data, such as whether the detainee had a special vulnerability or if the detainee was in segregation for 14 consecutive days. Others did not include necessary data, such as:

- the detainee’s Alien Number;¹⁹
- the date the detainee was released;
- the number of days the detainee was in segregation; or
- the reason the detainee was placed in segregation.

Facilities also developed their own trackers at different times. For example, some facilities began using their own segregation tracker in 2015, while others did not begin until 2019. See Appendix E for examples of various formats of segregation trackers used by detention facilities at the time of our audit.

¹⁹ An Alien Number is a unique number assigned to a noncitizen.



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ICE Did Not Have Clear and Consistent Policies for Segregation

The deficiencies identified in our audit occurred also because ICE does not have clear and consistent segregation policies. Specifically, in its Segregation Directive, ICE requires careful consideration of alternatives to segregation, but only requires the FOD to document that alternatives to segregation were considered if the detainee has been held continuously in segregated housing for more than 30 days or for more than 14 days and meets one of the following circumstances:

- the FOD determines ICE headquarters should review the segregation placement;
- the detainee has a special vulnerability; or
- the facility is under heightened review.

ICE's policy does not clearly indicate how to assess and document that alternatives were considered, but only addresses when a written report must be submitted. This ambiguity prevents assurances that alternatives were actually considered.

ICE's detention file retention policy is likewise unclear. According to the 2011 PBNDS, field offices shall maintain detention files for a minimum of 18 months after release of the detainee, for auditing purposes. Once detention files are closed, the facility shall properly archive and dispose of files in accordance with agency policies and regulations. This guidance does not reference NARA's 6-year record retention requirement and has caused confusion as to the detention file record retention requirements. We learned that five facilities from our statistical sample only require detention files and segregation records to be retained for 3 years, which is not compliant with NARA's records schedule. When asked about their record retention policy, one official provided ICE's detention policy and stated, "... the NARA schedule was from 2011, and PBNDS was revised in 2016, with persistent language stating that field offices shall maintain detention files for a minimum of 18 months."

Without consistent documentation, ICE cannot ensure detention facilities house detainees in segregation only when necessary and as a last resort. Further, without clear record retention guidance facilities may destroy detention files before NARA's retention period ends. Unauthorized destruction of detention files and segregation records before NARA's retention period ends could prevent ICE, as well as external oversight organizations, from investigating possible cases of misuse or abuse of segregation.²⁰

²⁰ See 44 United States Code (U.S.C.) §§ 3105 ("Safeguards"); 3106 ("Unlawful removal, destruction of records").



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ICE Policy Does Not Require Complete Reporting of Segregation in Detention Facilities

Finally, because it does not require detention facilities to report all segregation placements, ICE does not have knowledge of and, therefore, has no oversight of most segregation placements in detention facilities. We analyzed approximately 44,556 segregation placements recorded in detention facilities' segregation trackers from FYs 2015 to 2019 and determined that 69 percent fell below ICE's required reporting threshold. Specifically, 30,652 lasted less than the 14-day reporting requirement.

“ICE does not maintain records of all detainee placements into segregation; these are kept by the individual facilities.”

- DHS' response to Senator Leahy's et al. September 26, 2016 letter

To understand how ICE policies compare to those of other Federal agencies, we compared ICE's reporting requirements to those of the largest Federal entity responsible for tracking inmates placed in segregation, the Department of Justice's Bureau of Prisons (BOP). BOP tracks all inmates placed in segregation. According to a Department of Justice report,²¹ in 2013, BOP implemented an automated tracking system, with planned updates in late 2016, to better assess its use of its Special Housing Units²² and enable staff to identify potential problems quickly. In addition, to increase transparency, BOP publicly reports its total population in segregation, regardless of duration, on a weekly basis.

ICE relies on SRMS data to answer congressional questions regarding its use of segregation. Because ICE policy only requires its detention facilities to report a subset of all segregation placements, ICE cannot accurately report the actual use of segregation to Congress and to the public. In the segregation trackers from FY 2015 through 2019 that we reviewed, we identified approximately 44,556 segregation placements at 82 facilities; during the same timeframe for the same facilities, ICE's SRMS data only showed a total of 11,893 segregation placements. ICE's own reporting policy prevents transparency about the prevalence of segregation use with Congress and the public.

²¹ U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing, Jan. 2016.

²² BOP inmates placed in segregation are housed in Special Housing Units.



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Conclusion

Numerous studies²³ have found that any time spent in segregation can be detrimental to a person's health and that individuals in solitary confinement may experience negative psychological and physical effects even after being released. Without adequate oversight, clear policies, and comprehensive data, ICE does not accurately capture or report the full extent of detention facilities' use of segregation. Although ICE relies on SRMS data to inform Congress and the public, the data in SRMS is a subset of the total number of ICE segregation placements, and ICE lacks the controls to determine whether detention facilities are accurately reporting the use of segregation. Improved oversight of tracking and reporting and better policies and data would help ICE ensure segregation placements are necessary, comply with policy, and more importantly, help safeguard the health and safety of all detainees.

Recommendations

Recommendation 1: We recommend ICE ERO Assistant Directors for Custody Management and Field Operations update ICE policy and guidance and track all segregation placements to better ensure that facilities' use of segregation is necessary and in compliance with detention standards.

Recommendation 2: We recommend ICE ERO Assistant Directors for Custody Management and Field Operations require all detention facilities to collect and track standardized information for all segregation placements and provide this information to ICE for entry into the official system of record (i.e., SRMS).

Recommendation 3: We recommend ICE's Records Officer, in conjunction with the Executive Assistant Director for Enforcement and Removal Operations, update all policies, guidance, and contracts for detention facilities to ensure compliance with the National Archives and Records Administration's record retention schedules.

Management Comments and OIG Analysis

ICE concurred with all three recommendations and provided comments to the draft report. We included a copy of ICE's management comments in their entirety in Appendix A. ICE also provided technical comments to our draft report, and we made changes to incorporate these comments as appropriate.

²³ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POLY 325 (2006); Kaba F, Lewis A, et al. *Solitary confinement and risk of self-harm among jail inmates*. Am. J. Public Health. 2014 Mar;104(3):442-7; and *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan E. Mendez).



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All three recommendations are open and resolved. A summary of the Department's responses and our analysis follows.

ICE Response to Recommendation 1: Concur. ICE ERO is updating ICE Directive 11065.1, pending the publication of an upcoming DHS Office for Civil Rights and Civil Liberties' report on ICE's use and oversight of segregation. The updated directive will require that all segregation placements be entered into SRMS. ERO Custody Management and Field Operations will establish processes, policy and guidance to facilitate complete and timely reporting. ICE estimates a completion date of August 31, 2022.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. The recommendation will remain open until ICE provides documentation showing its processes, policy, and guidance, including the updated Segregation Directive. These updates should require all segregation placements be entered into SRMS to facilitate complete and timely reporting in compliance with detention standards.

ICE Response to Recommendation 2: Concur. ICE operates a network of more than 200 detention facilities with several different contractual parties. ICE ERO agrees that all segregation placements should be captured and that there should be a minimum baseline of required data and information collected for all segregation placements. With the anticipated update to the ICE Directive 11065.1, all segregation cases will be required to be uploaded to SRMS. ICE estimates a completion date of August 31, 2022.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. The recommendation will remain open until ICE provides documentation to show (1) what standardized information detention facilities will be required to track and record for segregation placements, and (2) how detention facilities will report this information to ICE for recordkeeping in SRMS.

ICE Response to Recommendation 3: Concur. ICE ERO will undertake a comprehensive review of ERO policies, guidance, and detention center contracts to ensure that they are not in conflict with records control schedules. ICE estimates a completion date of August 31, 2022.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. The recommendation will remain open until ICE provides documentation showing ERO policies, guidance, and contracts for detention facilities are compliant with records retention schedules.



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Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted this audit to determine whether ICE's use of administrative and disciplinary segregation across all authorized detention facilities complies with ICE detention standards. Our audit scope included all ICE detention facilities that housed detainees in segregation from FYs 2015 through 2019. To answer our objective, including the assessment of internal controls, we reviewed related legislation, operating plans, policies, procedures, and handbooks. We also reviewed prior OIG reports, media articles, research and studies on segregation, and congressional testimony. We analyzed and reviewed segregation placements from ICE's system of record, SRMS, and reviewed segregation trackers provided by facilities.

We interviewed ICE personnel from ERO's Custody Management Division and Field Operations Division. We also interviewed ICE personnel from the Office of Professional Responsibility, Office of Detention Oversight, Detention Management Oversight Units, Office of Information Governance and Privacy, and Government Information Law Division. We met with staff from DHS' Office for Civil Rights and Civil Liberties, as well as a former ICE official involved with the early formation of segregation policies at ICE. Further, we received walk-throughs of ICE's segregation system of record, SRMS, as well as ICE's ENFORCE Alien Removal Module.

Due to the COVID-19 pandemic, we conducted all audit steps via telephone, email, or video communication. Although the team did not physically travel for meetings or site visits, we do not believe these restrictions impaired our ability to gather sufficient evidence to support our audit conclusions.

We reviewed SRMS to identify the reported number of segregation placements. We performed limited testing to verify the accuracy of SRMS. Specifically, we compared the segregation placements within SRMS with the placements recorded in the facilities own segregation trackers and identified incomplete and possibly inaccurate segregation placements. Additionally, as discussed in the report, ICE relies on facilities to self-report segregation placements and lacks controls to ensure facilities report their use of segregation. We determined that information captured in SRMS was not sufficiently reliable and, therefore, did not rely solely on the data to support audit conclusions. Instead, we used SRMS in conjunction with our detention file analysis to draw our audit conclusions.



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To test ICE's oversight of detainees in segregation and ensure compliance with ICE's 2013 Segregation Directive, we consulted the OIG Office of Audits Statistician to identify a proportionate stratified statistical sample using a 90 percent confidence level and 5 percent sample error. We identified the sample size needed from a universe of 10,463 detainees from SRMS to be 265 detainees. According to ICE and detention facility officials, of the 265 detention files requested, 24 were destroyed and an additional 8 files were missing. ICE provided the audit team with segregation documents from SRMS for the 32 destroyed or missing detention files. Although the level of detail in the segregation documents from SRMS varied, we reviewed each document provided. We also reviewed all detention files provided by the facilities to determine whether all instances of segregation were recorded in SRMS, within the required timeframes, as required. In addition, we reviewed each file to identify any evidence that the facility considered alternatives to segregation. The Office of Detention Oversight reviews detention files, as well as segregation documentation, for compliance with the standards, as part of its annual inspections of ICE detention facilities. As a result, we determined these detention files were sufficiently reliable to support our findings.

We reviewed facility segregation trackers to identify the total number of segregation placements, regardless of ICE's reporting threshold. We requested segregation trackers from all detention facilities that hold detainees for more than 72 hours, excluding family and juvenile detention facilities. We received trackers from 87 of 156 detention facilities but were unable to review 5 trackers due to either poor quality of the data or data outside the scope of our audit. We analyzed the remaining 82 trackers to identify the total number of segregation placements and the number of placements that did not meet ICE's reporting criteria. For reasons discussed in this report, we determined this data to be unreliable and, therefore, did not use it to support our audit findings.

We conducted this performance audit between August 2020 and August 2021 pursuant to the *Inspector General Act of 1978, as amended*, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

The Office of Audits major contributors to this report are Shelley Howes, Director; David Lu, Audit Manager; Amber Carlson-Jones, Auditor-In-Charge; Elizabeth Finn, Program Analyst; Richard Joyce, Program Analyst; Lindsey Koch, Communications Analyst; Scott Crissey, Independent Referencer; and Jacqueline Nuckols, Independent Referencer.



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Appendix A
ICE's Comments to the Draft Report

Office of the Chief Financial Officer

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

September 29, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Stephen A. Roncone 
Chief Financial Officer and
Senior Component Accountable Official

SUBJECT: Management Response to Draft Report: "ICE Needs to
Improve Its Oversight of Segregation Use in Detention
Facilities" (Project No. 20-054-AUD-ICE)

Thank you for the opportunity to comment on this draft report. U.S. Immigration and Customs Enforcement (ICE) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

ICE is pleased to note OIG's recognition of ICE's efforts with respect to segregation placement, review, and notification. For example, the draft report acknowledges that ICE developed detention standards that address the use of segregation, and that ICE issued Directive 11065.1, "Review of the Use of Segregation for ICE Detainees," dated September 4, 2013, to complement the requirements in the standards. Placement of detainees in segregated housing is a serious step to which ICE and detention facilities apply careful consideration of alternatives. ICE remains committed to ensuring the appropriate use of segregation for its detainees, including through, robust review and oversight of facility segregation practices.

ICE remains committed to continually enhancing civil detention operations to promote a safe and secure environment for detainees and staff. The goal of ICE detention standards is to ensure that detainees are treated humanely, protected from harm, provided appropriate medical and mental health care, and receive the rights and protections to which they are entitled.

The draft report contained three recommendations with which ICE concurs. Attached find our detailed response to each recommendation. ICE previously submitted technical

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comments addressing several accuracy, contextual, sensitivity concerns, and other issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment

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**Attachment: Management Response for Recommendations
Contained in 20-054-AUD-ICE**

OIG recommended that ICE ERO’s Assistant Directors for Custody Management and Field Operations:

Recommendation 1: Update ICE policy and guidance and track all segregation placements to better ensure that facilities’ use of segregation is necessary and in compliance with detention standards.

Response: Concur. ICE Enforcement and Removal Operations (ERO) is updating ICE Directive 11065.1, pending the publication of the Department of Homeland Security Office for Civil Rights and Civil Liberties’ (CRCL) upcoming report on ICE’s use and oversight of segregation. Once the CRCL report is complete, ICE will include in its updated directive the requirement that all segregation placements be entered into the Segregation Review Management System (SRMS), which is ICE ERO’s official system of record to track detainees placed in segregation. While the size of ICE’s network of detention facilities may present reporting challenges, ERO Custody Management and Field Operations will work together to establish processes and guidance and facilitate complete and timely reporting. Estimated Completion Date (ECD): August 31, 2022.

Recommendation 2: Require all detention facilities to collect and track standardized information for all segregation placements and provide this information to ICE for entry into the official system of record (i.e., SRMS).

Response: Concur. ICE operates a network of more than 200 detention facilities with several different contractual parties. ICE ERO agrees that all segregation placements should be captured and that there should be a minimum baseline of required data and information collected for all segregation placements. With the anticipated update to the ICE Directive 11065.1, all segregation cases will be required to be uploaded to SRMS. ECD: August 31, 2022.

OIG recommended that ICE’s Records Officer in conjunction with the Executive Assistant Director for Enforcement and Removal Operations:

Recommendation 3: Update all policies, guidance, and contracts for detention facilities to ensure compliance with the National Archives and Records Administration’s record retention schedules.

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Response: Concur. ICE ERO will undertake a comprehensive review of ERO policies, guidance, and detention center contracts to ensure that they are not in conflict with records control schedules. ECD: August 31, 2022.

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Appendix B Segregation Placement Reasons²⁴

Placement Reason	Definition
Facility Security Threat: Due to Serious Criminal Convictions	Detainee that poses a <u>threat to others in GP because he has a serious criminal conviction</u> such as homicide, murder or child molestation that warrants separation from other detainees.
Facility Security Threat: Gang Member Status (Not Protective Custody)	Detainee that is placed in segregation in response to the <u>detainee's known gang status</u> . His segregation placement, at least in part, is for the safety of other detainees and orderly running of a detention facility.
Facility Security Threat: Other	Detainee poses a <u>security risk to the safe and orderly operation of a detention facility</u> , but the placement reason does not equate to a gang status, violent or disruptive behavior, or serious criminal convictions such as escape risk.
Facility Security Threat: Violent or Disruptive Behavior	Detainee has a <u>history or is currently displaying violent or disruptive behavior</u> that poses a security risk to other detainees and the safe operation of a detention facility.
Hunger Strike	Detainee is placed in segregation in response to a <u>hunger strike</u> .
Medical: Detox/Withdrawal Observation	Detainee is experiencing <u>withdrawal symptoms and is unable to safely function</u> in general population while they detox. This placement reason will be used only if the detainee is not placed in a designated and/or dedicated Medical Unit and Admin Segregation is utilized.
Medical-Disabled or Infirm	Detainee is unable to <u>safely live under general populations' constraints due to a disability</u> . This placement reason will be used only if there is not a designated Medical Unit and Admin Segregation is utilized.
Medical-Other	Detainee that has <u>any medical condition that is not previously captured</u> by detox/withdrawal observation, disabled, or TB or Other Infectious Diseases but warrants segregation. This placement reason will be used only if there is not a designated Medical Unit and Admin Segregation is utilized.
Medical: TB or Other Infectious Diseases	Detainee must be placed in segregation as a result of <u>TB or other infectious diseases</u> to prevent the spread of the disease. This placement reason will be used only if there is not a designated Medical Unit and Admin Segregation is utilized.
Mental Illness	Detainee is unable to <u>safely and easily live under general populations' constraints due to a mental illness</u> . This placement reason will be used only if there is not a designated Medical Unit and Admin Segregation is utilized.

²⁴ The placement reasons in Appendix B were in effect during the scope of our audit. In January 2021, ICE updated the placement reasons.



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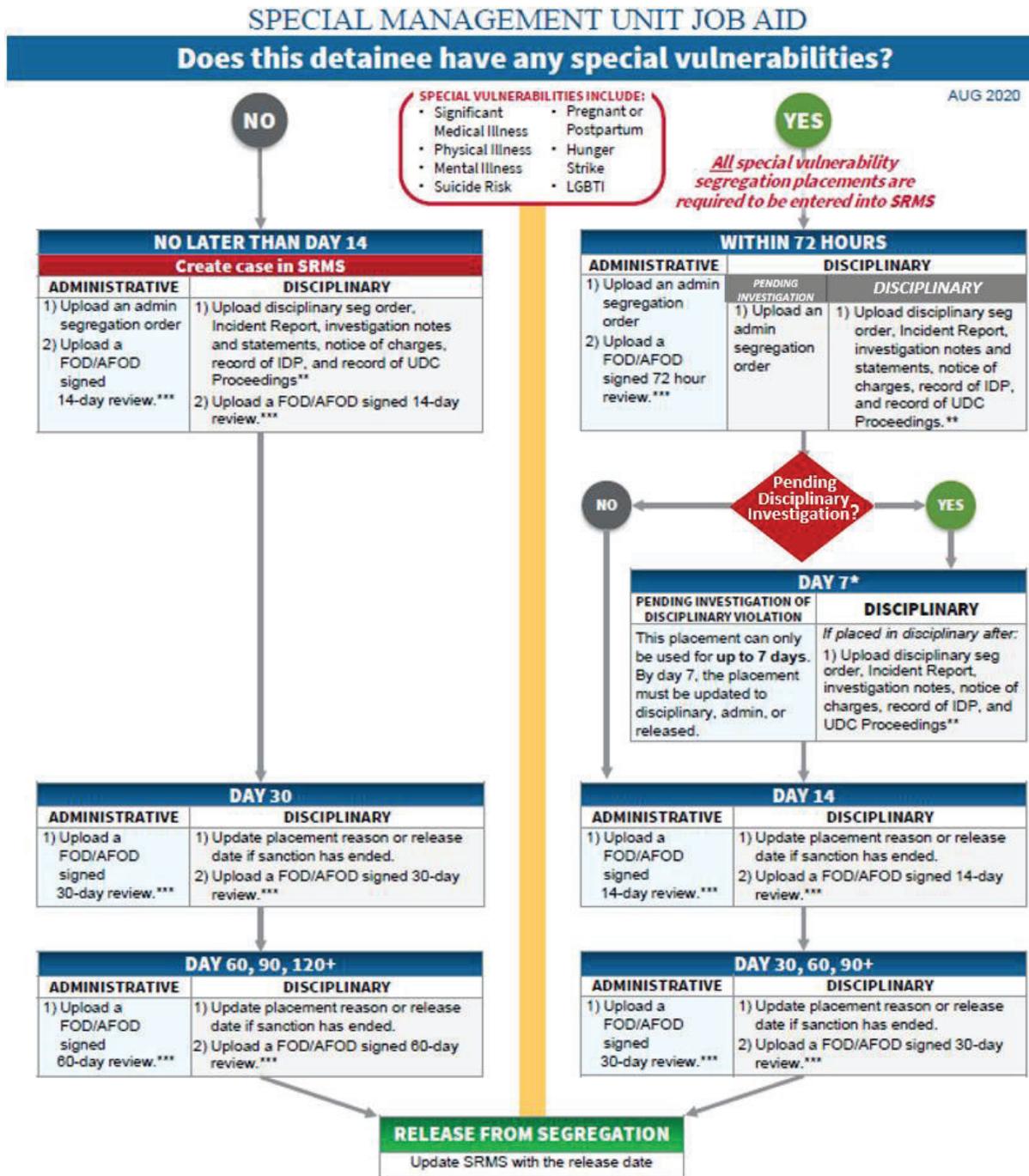
Placement Reason	Definition
Mental Illness: Observation	Detainee <u>observed or reviewed for a mental illness</u> in an administrative segregation unit.
Other	<i>This placement reason is being phased out. Please use another more appropriate reason in your case creation.</i>
Pending Investigation into Disciplinary Violation	Detainee is <u>awaiting IDP hearing and/or sanctions</u> .
Protective Custody: Criminal Offense (e.g. Sex Offender)	Detainee or the facility determines that due to a <u>criminal conviction the detainee will be targeted</u> in general population.
Protective Custody: Gang Status (Protective Custody Only)	Detainee or facility believe that <u>past or present gang affiliation would cause vulnerability</u> in the general population
Protective Custody: LGBTI	Detainee is <u>gay, lesbian, bisexual, transgender, or intersex</u> and the facility or detainee believes general population is unsafe due to sexual orientation or gender identity, after an individualized assessment.
Protective Custody: Other	Detainee that requires protective custody that <u>does not fall into the Criminal Offense, Gang Status, LGBT, Special Vulnerability, or Victim of Sexual Assault</u> placement reasons.
Protective Custody: Special Vulnerability	Detainee segregated due to the following special vulnerabilities: <u>elderly, pregnant, have been victims of torture trafficking or other physical abuse</u> , after an individualized assessment.
Protective Custody: Victim of Sexual Assault	Detainee segregated as <u>a victim, following the report of a sexual abuse or assault</u> . The detainee is not to be held in administrative segregation on this basis for more than five days, except in highly unusual circumstances or at the detainee's request. The detainee should not be placed in segregation solely based on being a victim of sexual assault.
Suicide Risk Placement	Detainee who facility personnel believe <u>may be suicidal</u> and must be kept in segregation for observation.
Protective Custody: Detainee Safety	If facility personnel believe that the <u>detainee is threatened or endangered in general population</u> .
Detainee Request	Detainee that claims fear, is scared, or detainees who refuse to return to the general population, but do not provide the reason for refusal.
Medical: Observation	Detainee <u>recovering from surgery or being observed or reviewed for a medical illness</u> in an administrative segregation unit due to a shortage of medical housing.

Source: ICE ERO's Segregation Management Field Office training slide deck (2020)



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Appendix C Segregation Reporting Requirements Flowchart



*	The exception is for SAAP/PREA investigations.
**	Facilities under PBNDS 2011 rev. 2016 may skip the UDC Proceeding
***	Signature, Printed Name, Date, Title

Source: ICE ERO's Segregation Management Field Office training slide deck (2020)



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Appendix D Reported Results from Prior DHS OIG Inspections



1. OIG-17-43 MA

Detainees at the Theo Lacy Detention Facility placed in disciplinary segregation were isolated for 24 hours a day in a cell with no access to visitors, recreation, or group religious services. Detainees were released briefly every other day to shower.



2. OIG-17-119

DHS OIG Inspectors found:

- Some instances of segregation were not entered into SRMS.
- Some instances of segregation were reported late to ICE HQ.
- ICE could not ensure required reviews were completed.



3. OIG-18-32

Potential Misuse of Segregation - Staff did not always tell detainees why they were being segregated, nor did they always communicate detainees' rights. In multiple instances, detainees were disciplined without adequate documentation in the detainee's file to justify the disciplinary action.



4. OIG-18-86

At the Adelanto ICE Processing Center, detainees in disciplinary segregation were:

- placed prematurely and inappropriately;
- improperly handcuffed and shackled; and
- lacked communication assistance.



5. OIG-19-47

Spot inspections of the Adelanto, Essex, and Aurora facilities identified:

- Two facilities prematurely placed detainees in disciplinary segregation.
- All three placed detainees in disciplinary segregation in restraints when outside their cells.
- One facility strip-searched detainees entering segregation.
- Two facilities did not provide detainees in segregation the required recreation time or time outside cells.



6. OIG-21-03

The records for detainees in segregation at the Howard County Detention Center were incomplete. DHS OIG Inspectors were unable to verify whether those detainees received three meals daily and received the necessary review by medical staff to ensure their suitability for continued stay in segregation.



7. OIG-21-12

The Imperial Regional Detention Facility held detainees in administrative segregation for prolonged periods, under excessively restricted conditions, and without adequate medical checks. Specifically, the facility was using administrative segregation as a long-term solution.



8. OIG-21-30

Segregation records at La Palma Correctional Center raised concerns about detainee care. The facility did not:

- provide required services and privileges to detainees.
- fully complete records for medical administration and medical visits.



9. OIG-21-32

Welfare checks for detainees in segregation were insufficient at Pulaski County Jail. Facility staff did not always look in the cell to observe the detainee. Facilities must properly conduct welfare checks every 30 minutes to prevent suicide and identify detainees who need medical assistance.

Source: DHS OIG reports website <https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations>



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Appendix F
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