

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 11063.2: Identification, Communication, Recordkeeping, and Safe Release Planning for Detained Individuals with Serious Mental Disorders or Conditions and/or Who Are Determined To Be Incompetent By An Immigration Judge¹

Issue Date: April 5, 2022

Superseded: ICE Policy 11067.1, Identification of Detainees with Serious Mental Disorders or Conditions (May 7, 2014).

ICE ERO Policy 11063.1, Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees with Serious Mental Disorders or Conditions (Apr. 22, 2013).

- 1. Purpose/Background.** The identification, diagnosis, treatment, and monitoring of individuals with serious mental disorders or conditions and/or who are determined by an immigration judge (IJ) to be incompetent to represent themselves in removal proceedings serves to protect the individuals, facilities, and U.S Immigration and Customs Enforcement (ICE) staff. Promoting information sharing and robust communication between ICE and these individuals' attorneys of record, legal representatives, and/or Qualified Representatives (QRs)² is also essential to ensuring safety and avoiding impediments to due process. To update policies and procedures relating to individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, this Directive supersedes prior ICE policy concerning the identification, monitoring, and tracking of such individuals, and the exchange of relevant information between appropriate parties. For instances where release is appropriate, this Directive also establishes policies and procedures relating to the safe release of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, consistent with all legal requirements and court orders.
- 2. Policy.** It is ICE Policy that all individuals in ICE custody be properly screened pursuant to the applicable detention standards so that those with serious mental disorders or conditions are expeditiously identified. Additionally, when warranted, information relevant to an individual's serious mental disorder or condition will be provided to the Executive Office for Immigration Review (EOIR), as permitted by law, so that an IJ can

¹ This Directive applies to the Office of the Principal Legal Advisor (OPLA) to the extent it is not inconsistent with directives, policies, or formal guidance issued by the General Counsel of the Department of Homeland Security (DHS). DHS Delegation No. 0400.2, Delegation to the General Counsel (Sept. 14, 2004).

² An individual meeting certain eligibility criteria may be appointed as a QR through the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) National Qualified Representative Program (NQRP). See EOIR Policy, *Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained Aliens with Serious Mental Disorders or Conditions* (Apr. 22, 2013).

determine whether the individual is competent to represent themselves in removal proceedings and to facilitate effective case processing. Individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ will be provided necessary and appropriate treatment and monitoring while in ICE custody.

In recognition of the vulnerability of such individuals, ICE is instituting additional safeguards prior to the transfer, release, or removal of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ. For instance, ICE will communicate with the individual's attorney of record, legal representative, and/or QR to ensure efficient information sharing and coordination between the relevant parties. Additionally, when it has been determined that such an individual will be released from ICE custody, consistent with all legal requirements and court orders, ICE will ensure that a safe release plan is in place for the individual, and that the attorney of record, legal representative, and/or QR is notified. When it has been determined that such an individual will be transferred, the requirements of ICE Policy No. 11022.1, Detainee Transfers (Jan. 4, 2012), shall also apply to transfers within an area of responsibility (AOR).

2.1. Detention Standards. All versions of ICE's national detention standards³ require facilities housing noncitizens to provide the following to all newly admitted individuals:

- 1) An initial medical screening, including a documented mental health screening;
- 2) A 14-day full medical assessment, with mental health components; and
- 3) Timely referrals for follow-up mental health evaluations, diagnosis, treatment, or stabilization.

3. Definitions. The following definitions apply for purposes of this Directive only.

3.1. Behavioral Health Unit Case Managers (BHCMS). BHCMS work closely with Field Medical Coordinators (FMCs) to identify behavioral health cases and coordinate all aspects of behavioral health case management – to include monitoring, housing, placement, and facilitation of safe release planning. The BHCMS monitor bed availability ensuring appropriate clinical level of care is provided and coordinate closely with the FMCs regarding the transfer of cases.

3.2. Detention Service Managers (DSMs) and Detention Standards Compliance Officers (DSCOs). DSMs and DSCOs review facility operations to ensure compliance with

³ U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities § 4.3(II)(D)-(E), (S) (2019); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 § 4.3(V)(J), (M), (O) (2011, rev. 2016); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 § 22(V)(I), (J)-(K) (2008); U.S. Immigration and Customs Enforcement, 2000 National Detention Standards, Medical Care § III(D) (2000).

applicable ICE detention standards, resolve issues and concerns of individuals detained in ICE custody “on the spot” when possible, work with local ICE Enforcement and Removal Operations (ERO) field offices to address concerns, and report significant issues to ICE Headquarters (HQ).

- 3.3. **FMCs.** Medical consultants to an ICE ERO field office within a particular AOR who serve as a liaison between the field office, medical staff at non-ICE Health Service Corps (IHSC) detention facilities, and IHSC HQ.
- 3.4. **Field Responsible Officials (FROs).** The highest-ranking official in any ICE field location. This includes Special Agents in Charge, Field Office Directors (FODs), ICE Attachés, Chief Counsels, and any other officials who have been designated, in writing by the Director.
- 3.5. **Headquarter Responsible Officials (HROs).** Executive Associate Directors of ERO, Homeland Security Investigations, and Management and Administration; the Principal Legal Advisor; the Associate Director of the Office of Professional Responsibility; and the Assistant Directors, Officers, or equivalent positions who report directly to the Director, Deputy Director, or Chief of Staff.
- 3.6. **Health Services Administrators (HSAs).** Liaisons between the medical team at IHSC-staffed facilities and ICE to ensure access to care and provision of health care services. HSAs also work with local ICE ERO field offices to notify, monitor, and provide updates on detained individuals who have a serious medical and/or mental health condition.
- 3.7. **Legal Representative.** Individuals authorized by EOIR’s Recognition and Accreditation Program to represent noncitizens in immigration legal matters in removal proceedings and who have a Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative, on file with the immigration court.
- 3.8. **NQRP.** A nationwide program administered by EOIR to provide QRs to certain unrepresented and detained respondents who are found by an IJ to be mentally incompetent to represent themselves in immigration proceedings.
- 3.9. **Qualified Health Care Professionals (QHCP).**⁴ Physicians, physician assistants, nurses, nurse practitioners, or others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for patients.
- 3.10. **QR.** A licensed attorney, accredited representative, or supervised law student/graduate who is an individual’s appointed representative in immigration court following an IJ’s determination that an individual is incompetent and requires representation via the NQRP. A QR will have a Form EOIR-28, Notice of Entry of Appearance as Attorney or

⁴ This definition includes behavioral health providers, such as licensed psychiatrists, psychologists, licensed clinical social workers, and psychiatric advanced practice providers.

Representative, on file with the immigration court and will have noted their appearance as a QR.

3.11. Serious Mental Disorder or Condition. Characterized by a QHCP after:

1) Determining that an individual in custody:

- a) Has a mental disorder that is causing serious limitations in communication, memory, or general mental and/or intellectual functioning (e.g., communicating, conducting activities of daily living, social skills), or a severe medical condition(s) (e.g., traumatic brain injury or dementia) that is significantly impairing mental function; or
- b) Is exhibiting one or more of the following active psychiatric symptoms and/or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, and/or marked anxiety or impulsivity;

or:

2) Otherwise diagnosing a detained individual as demonstrating significant symptoms of one or more of the following:

- a) Psychosis or Psychotic Disorder;
- b) Bipolar Disorder;
- c) Schizophrenia or Schizoaffective Disorder;
- d) Major Depressive Disorder with Psychotic Features;
- e) Dementia and/or a Neurocognitive Disorder; and/or
- f) Intellectual Development Disorder (moderate, severe, or profound).

4. Responsibilities.

4.1. The ICE ERO HRO is responsible for:

- 1) Ensuring overall compliance with this Directive within ERO;
- 2) Developing and issuing any necessary implementation guidance specific to ERO, in coordination with the ICE Office of Regulatory Affairs and Policy;

- 3) Maintaining ERO HQ and IHSC HQ points of contact (POCs) and field office POCs in each AOR for cases involving individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ;
- 4) Ensuring that there is a designated legal access email inbox in each field office for communication between ICE and attorneys of record, legal representatives, and/or QRs of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, and that it is appropriately monitored;
- 5) Procuring, developing, and implementing an oversight and tracking system, including any necessary alerts in the Enforce Alien Removal Module (EARM) (or any successor systems) as described in this Directive, to allow for monthly reporting to ERO HQ the number of detained individuals in each AOR with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, and the status of their immigration case; and
- 6) Developing and providing annual training on procedure and documentation requirements associated with cases involving individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ to Deportation Officers, Supervisory Detention and Deportation Officers, and Assistant Field Office Directors who are assigned to detained dockets, as described in this Directive.

4.2. FODs are responsible for:

- 1) Ensuring compliance with this Directive within their respective AOR;
- 2) Designating a coordinator at the supervisory level in each ERO Field Office to serve as the legal access field point of contact (LA POC) for purposes of this Directive;
- 3) Ensuring ICE personnel notify them as soon as practicable, but generally within 72 hours, of the presence of individuals found to have a serious mental disorder or condition in ICE custody;
- 4) Ensuring that designated mental health professionals have the necessary access to detained individuals with serious mental disorders or conditions to conduct Forensic Competency Examinations (FCEs) on behalf of EOIR, as well as examinations when requested by an attorney of record, legal representative, and/or QR for the purpose of assessing a detained individual's competency or preparing expert testimony;
- 5) Ensuring that communication with individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ are conducted in their primary language by providing appropriate language interpretation services during interactions with staff and when they are receiving medical or mental health care;

- 6) Assisting OPLA in collecting and providing relevant medical and other institutional records from the detention facility and IHSC or contract medical providers so that OPLA may provide them to EOIR for the IJ to make a competency determination and/or provide them to attorneys of record, legal representatives, and/or QRs, as permitted by law;
- 7) Ensuring, in coordination with IHSC and facility medical staff, that individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ receive appropriate medical and mental health care;
- 8) Reviewing and monitoring, in coordination with IHSC and facility medical staff, the housing and appropriateness of conditions of confinement for individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, and where appropriate, effectuating transfers to detention facilities equipped to provide appropriate care;
- 9) When considering the transfer of an individual with serious mental disorders or conditions and/or who was determined to be incompetent by an IJ, coordinating with ERO HQs and notifying the individual's attorney of record, legal representative, and/or QR in the course of considering transfer;
- 10) Facilitating communication between attorneys of record, legal representatives, and/or QRs and individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ. Facilitation of communication may include but is not limited to:
 - a) Providing access to medical or mental health professionals for in-person,⁵ telephonic, or videoconference (where available) FCEs or other forensic medical evaluations;
 - b) Supporting the pre-scheduling of attorney of record, legal representative, and/or QR calls at no cost to the detained noncitizen; and
 - c) Providing extended time for calls or visitation, if possible.
- 11) Coordinating with the relevant OPLA field location to:
 - a) Ensure notification within 72 hours to appropriate HQ POCs and ERO LA POCs

⁵ As consistent with ICE national detention standards. *See generally* U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities § 5.5(II)(M)(4) (2019); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 §§ 4.3(FF), 5.7(V)(N)(1) (2011, rev. 2016); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 § 22(V)(Y) (2008); U.S. Immigration and Customs Enforcement, 2000 National Detention Standards, Visitation § III(O)(5) (2000).

of an IJ's decision determining a noncitizen mentally incompetent to represent themselves in immigration proceedings;

- b) Obtain contact information for the attorney of record, legal representative, and/or QR of an individual with serious mental disorders or conditions and/or who was determined to be incompetent by an IJ;
 - c) Notify the attorney of record, legal representative, and/or QR in the event an individual with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ is admitted to a hospital or other treatment facility for an emergent health condition;
 - d) Meet at least monthly to ensure that ERO field office personnel, IHSC, and OPLA discuss any cases within their AOR involving individuals in ICE custody with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ;
 - e) Whenever practicable, facilitate the presence of the detainee at any competency hearings, judicial competency inquiries, or other immigration proceedings, as appropriate, for individuals with serious mental disorders or conditions; and
 - f) Ensure prompt collection and sharing of relevant medical and other institutional records pertaining to the individual with EOIR and the attorney of record, legal representative, and/or QR as permitted by law.
- 12) Providing ERO HQ a monthly report identifying all individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ detained in their AOR, and for each individual, identifying:
- a) The status of their immigration case;
 - b) Whether the individual is subject to mandatory detention and why; and
 - c) The individual's projected release date, if any, and steps taken to ensure a safe release.

4.3. IHSC Personnel are responsible for:

- 1) Notifying the FOD, IHSC HQ, and the OPLA field location, as soon as practicable but no later than 72 hours, after identification of detained individuals with a serious mental disorder or condition;
- 2) Maintaining medical and mental health information regarding all individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ;

- 3) In coordination with the FOD, monitoring the condition of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, including but not limited to the general and mental health of the individual, as well as any specific risk factors or concerns;
- 4) Immediately advising the FOD if IHSC is unable to identify an appropriate detention location to provide mental health care for an individual with serious mental disorders or conditions;
- 5) Regularly re-evaluating individuals with serious mental disorders or conditions to inform the FOD as part of the ongoing general health and well-being review to ensure such individuals are appropriately housed and receive necessary and appropriate mental health care; and
- 6) Tracking, monitoring, and reporting on all individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ detained in ICE custody in their AOR and communicating with the FOD, or their designee, concerning the medical condition of these individuals on a biweekly basis.

4.4. DSMs and DSCOs are responsible for contacting their respective FODs and the FMC (or appropriate IHSC BHCMS) if any serious mental health concerns are identified through the course of their interactions with individuals detained in ICE custody.

5. Procedures/Requirements.

5.1. Notification and Monitoring.

- 1) FODs will:
 - a) Coordinate with IHSC and OPLA to:
 - i) Monitor cases of detained individuals within their AOR with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ until removal or release; and
 - ii) Provide a monthly report to ERO HQ identifying all individuals in ICE custody within their AOR with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, the immigration status of their case, if the individual is subject to mandatory detention and why, projected release dates (if any), and steps taken to ensure a safe release consistent with all legal requirements and court orders.
 - b) In conjunction with the FMC, appropriate IHSC BHCM, or an appropriately designated IHSC medical provider:

- i) Ensure that FODs are notified by facility custody personnel (including contractor personnel) and medical staff, as soon as practicable but no later than 72 hours after identification, of all detained individuals housed at the facility with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ;
- ii) Ensure that FODs and the OPLA field location are notified, as soon as practicable but no later than within 72 hours of identification, of any detained individual with serious mental disorders or conditions and/or who was determined to be incompetent by an IJ who is being housed in administrative segregation or who has been hospitalized due to a serious mental disorder or condition while in ICE custody; and
- iii) In cases where the transfer of detained individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ is being considered, ensure the transfer would not unnecessarily disrupt continuity of care and determine whether the intended receiving facility would provide an environment suited for the needs of the individual. All transfers of detained individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ shall be conducted in accordance with the relevant transfer factors as outlined in ICE Policy No. 11022.1, Detainee Transfers (Jan. 4, 2012), or as updated.⁶
 - A) Transfer decisions regarding detained individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ must be approved by the FOD or their field office supervisory-level designee, and the reasons for the transfer documented in the individual's A-file. If a decision is made to transfer the noncitizen, ICE personnel shall take measures to transfer as soon as practicable. If, after a review of the individual's serious mental disorder or condition, it is determined that transfer is not practicable, the FOD or their field office supervisory-level designee should consider whether release of the subject and enrollment in an Alternatives to Detention program is permissible and appropriate.
- c) Review all actions for release, transfer, or removal of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ to ensure that notification requirements to attorneys of record, legal representatives, and/or QRs set forth in sub-section 5.4 have been met; and
- d) Work collaboratively with attorneys of record, legal representatives, and/or QRs after the release of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ on ongoing reporting conditions or

⁶ ICE Policy No. 11022.1 shall also apply to transfers within an AOR.

obligations to ensure they are appropriate and any participation in an ICE Alternatives to Detention program is tailored to the individual's special needs.

- 2) The HSA, FMC, or an appropriately designated IHSC QHCP is required to:
 - a) Notify their respective FOD, as soon as practicable but no later than 72 hours after identification, that an individual with serious mental disorders or conditions and/or who was determined to be incompetent by an IJ has been taken into ICE custody in the FOD's AOR;
 - b) Notify the FOD and the local OPLA field location, as soon as practicable but no later than 72 hours after identification, when any individual with serious mental disorders or conditions and/or who was determined to be incompetent by an IJ has been placed in segregation in their AOR;
 - c) Notify the FOD, as soon as practicable but no later than 72 hours, when any detained noncitizen in their AOR has been hospitalized due to a serious mental disorder or condition;
 - d) Report any major changes in the health status of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ to the FOD as soon as practicable;
 - e) Monitor the condition of each detained individual with serious mental disorders or conditions and/or who was determined to be incompetent by an IJ, report any progress or changes with respect to the individual to the IHSC Behavioral Health Unit, and advise if transfer to another detention or off-site treatment facility is being or should be considered;
 - f) Review facility capabilities, as soon as practicable but no later than 72 hours after identification, to determine if another detention facility or off-site treatment facility would provide an environment better suited to the needs of the individual and immediately report the conclusion to the FOD; and
 - g) Where it is determined that another detention facility or off-site treatment facility would better serve the individual's treatment needs and such transfer is otherwise appropriate, coordinate with the FOD for the transfer, and immediately notify the local OPLA field location thereof, so that OPLA can inform EOIR of the transfer.

5.2. Coordination. FODs are required to:

- 1) FODs are required to:
 - a) Facilitate communication between QHCPs, attorneys of record, legal representatives, and/or QRs with individuals with serious mental disorders or

conditions and/or who are determined to be incompetent by an IJ. Facilitation of communication may include but is not limited to:

- i) Providing access to medical or mental health professionals for in-person,⁷ telephonic, or videoconference FCEs or other forensic evaluations, consistent with applicable detention standards;
 - ii) Facilitating the pre-scheduling of attorney of record, legal representative, and/or QR calls at no cost to the detained noncitizen; and
 - iii) Providing extended time for calls or visitation with the noncitizen's attorney of record, legal representative, and/or QRs, as necessary.
- b) Authorize advance notice.⁸ of at least 72 hours.⁹ to attorneys of record, legal representatives, and/or QRs regarding the release or removal of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ in order to facilitate the continuity of representation and/or enable safe release and/or repatriation; and
- c) Authorize advance notice.¹⁰ of at least 72 hours to attorneys of record, legal representatives, and/or QRs regarding the transfer of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ in order to facilitate the continuity of representation.
- 2) Officers assigned to a case involving individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ are required to provide the attorney of record, legal representative, and/or QR with the contact information for the designated LA POC.

5.3. Documentation.

⁷ See generally U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities § 5.5(II)(M)(4) (2019); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 §§ 4.3(FF), 5.7(V)(N)(1) (2011, rev. 2016); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 § 22(V)(Y) (2008); U.S. Immigration and Customs Enforcement, 2000 National Detention Standards, Visitation § III(O)(5) (2000).

⁸ HRO's may choose to not authorize advance notice of a release if a documented safety or security concern exists.

⁹ In circumstances in which a noncitizen is ordered released by an IJ, the Board of Immigration Appeals, or a federal court, the attorney of record, legal representative, and/or QR will generally receive notice of such order at or about the same time as ICE. In such circumstances, it will generally not be legally permissible to delay release for a period of 72 hours, and OPLA should be consulted immediately to determine how long release may be delayed to coordinate safe release. Best efforts should be made to ensure actual contact with the attorney of record, legal representative, and/or QR. Telephonic communication should be followed by email in circumstances in which ERO has access to a valid email address for such individuals. The inability to confirm contact despite documented efforts to do so would not preclude the release, transfer, or removal.

¹⁰ FRO's may choose to not authorize advance notice of a transfer if a documented safety or security concern exists.

- 1) The HSA, FMC, or an appropriately designated IHSC QHCP is required to:
 - a) Request that a QHCP complete a mental health review (IHSC Form 883), or that the facility provide the individual's medical records within the facility's possession as soon as practicable, but within no more than seven days after the detainee's placement in segregation or hospitalization to a QHCR; and
 - b) The FMC (or appropriate IHSC BHCM) is required to request medical records of detained individuals with serious mental disorders or conditions for follow-up mental evaluations, diagnosis, treatment, or stabilization pursuant to the requirements of ICE's national detention standards and provide all relevant documents to the local OPLA field location mental health POC.
- 2) Officers assigned to a case involving individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ are required to:
 - a) Document the individual's primary language, language interpretation services used, and translated documents provided;
 - b) Ensure that a comment documenting the QR's appointment (if applicable), the attorney of record, legal representative, and/or QR's name and contact information is made and that the "supporting info" section of EARM accurately reflects attorney of record, legal representative, and/or QR information; and
 - c) Document in the EARM all relevant communication with the individual's attorney of record, legal representative, and/or QR.
- 3) Officers assigned to a case in which an individual is determined to be incompetent by an IJ are additionally required to:
 - a) Place a "Mentally Incompetent – EOIR" EARM.¹¹ alert specifying that:
 - i) The individual has been determined to be mentally incompetent by an IJ; and
 - ii) Notice to their attorney, legal representative, and/or QR is required as soon as practicable, but no later than 72 hours prior to the individual's release, transfer, or removal is required.
 - b) Update EARM by removing the "Mentally Incompetent – EOIR" alert, when appropriate, and, if applicable, adding a note in the EARM case comments if an individual is later found to be mentally competent to represent themselves by an IJ.

¹¹ Or any successor system(s).

5.4. Safe Release. FODs or their designee.¹² will:

- 1) Consult with OPLA when questions arise regarding whether individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ may lawfully be released from ICE custody;¹³
- 2) Consider the following factors when making such custody determinations. The existence of any of the below factors should weigh in favor of release:
 - a) Whether an IJ has found the individual incompetent to represent themselves in removal proceedings and has been assigned a QR;
 - b) Whether the individual has been adjudged incompetent in a prior criminal or civil proceeding, or has been confined in a civil institution or hospital because of a serious mental disorder or condition; and/or
 - c) Whether the noncitizen has been housed recently or for a prolonged period in the medical or mental health clinic or special management unit of a correctional facility (or similar) due to the severity of the serious mental disorder or condition.
- 3) Where such a determination of release is made, develop and implement a safe release plan for individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, which will include:¹⁴
 - a) Supplying non-institutional, weather-appropriate clothing, where needed;
 - b) Providing a minimum 30-day supply of necessary medication to the noncitizen, consistent with current ICE national detention standards;¹⁵
 - c) Providing a detailed medical care summary containing a health history and instructions for the noncitizen to the noncitizen's attorney of record, legal representative, and/or QR;
 - d) Where appropriate, notifying facility medical personnel prior to releasing an individual so that personnel may identify, assist with, and/or provide for any

¹² Designees must be at the supervisor level.

¹³ When an individual with serious mental disorders or conditions and/or who was determined to be incompetent by an IJ is, or is likely to be, released into the custody of another law enforcement agency, ICE will coordinate release safely with that agency.

¹⁴ Where an individual described above has an attorney of record, legal representative, and/or QR, FROs or designated ERO field office supervisor personnel will coordinate with the individual's representative(s) prior to release and in consideration of any serious mental disorder or condition.

¹⁵ See generally U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities § 4.3(II)(Q)(4) (2019); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 § 4.3(V)(Z) (2011, rev. 2016).

medical needs associated with release. Where possible, there should be a team planning process on continuity of care with the facility and FOD coordinating on discharge planning in advance with the attorney of record, legal representative, QR, and/or family member;

- e) Coordinating with the facility to provide any commissary funds in cash upon release, when feasible;
 - f) Determining an appropriate location for release and ensuring that the time, place, and manner of release from a detention facility are consistent with safety considerations, taking into account the individual's serious mental disorder or condition;
 - g) Ensuring that the individual and/or their attorney of record, legal representative, and/or QR are made aware of the case and reporting requirements that apply to them upon release from ICE custody;
 - h) Referring individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ to community-based providers, as appropriate; and
 - i) Requesting that a family member, attorney of record, legal representative, and/or QR be present at the time of release.
- 4) For releases of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, ICE should notify¹⁶ the attorney of record, legal representative, and/or QR, and/or family member(s) at least 72-hours prior to the individual's release; any changes to a release plan should be conveyed to the same individuals as expeditiously as possible;¹⁷
- 5) For releases or removals of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, to the extent practicable, and in compliance with applicable confidentiality laws, ERO officers shall, barring emergency circumstances, provide at least 72 hours advance notice¹⁸ to the attorney of record, legal representative, and/or QR, and/or family member(s); and

¹⁶ Best efforts should be made to ensure actual contact with the attorney of record, legal representative, and/or QR. Telephonic communication should be followed by email in circumstances in which ERO has access to a valid email address for such individuals. The inability to confirm contact despite documented efforts to do so would not preclude the release, transfer, or removal.

¹⁷ In circumstances in which a noncitizen is ordered released by an IJ, the Board of Immigration Appeals, or a federal court, the attorney of record, legal representative, and/or QR will generally receive notice of such order at or about the same time as ICE. In such circumstances, it will generally not be legally permissible to delay release for a period of 72 hours, and OPLA should be consulted immediately to determine how long release may be delayed to coordinate safe release.

¹⁸ HRO's may choose to not authorize advance notice if a documented safety or security concern exists.

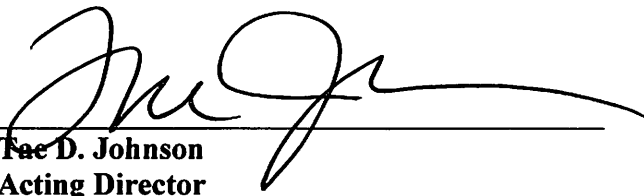
- 6) For transfers of individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, to the extent practicable, and in compliance with applicable confidentiality laws and policies, ERO officers shall, barring emergency circumstances, provide at least 72 hours advance notice.¹⁹ to the attorney of record, legal representative, and/or QR, and/or family member(s).
- 5.5. Training.** The ICE ERO HRO, or their designee, must develop and provide annual training on the procedures and documentation requirements involving individuals with serious mental disorders or conditions and/or who are determined to be incompetent by an IJ, as described in this Directive, to Deportation Officers, Supervisory Detention and Deportation Officers, and Assistant Field Office Directors who are assigned to detained dockets. This training must be completed upon entry on duty and annually thereafter.
- 5.6. Privacy.** The above responsibilities and procedures in no way relieve ICE personnel of their responsibility to maintain detainee privacy. When collecting, using, and maintaining detainees' sensitive personally identifiable information, ICE employees must comply with all applicable confidentiality laws and policies.
- 6. Recordkeeping.** All relevant documents produced or provided in accordance with this Directive must be maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records Schedule or a NARA-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.
- 7. Authorities/References.**
- 7.1.** ICE Directive 11071.1, Assessment and Accommodations for Detainees with Disabilities (Dec. 15, 2016).
- 7.2.** ICE Policy No. 11022.1, Detainee Transfers (Jan. 4, 2012).
- 7.3.** U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities (2019).
- 7.4.** U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 (2011, rev. 2016).
- 7.5.** U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 (2008).

¹⁹ FROs may choose to not authorize advance notice if a documented safety or security concern exists.

7.6. U.S. Immigration and Customs Enforcement, 2000 National Detention Standards (2000).

8. **Attachments.** None.

9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement