

07-0803

Secretary

U.S. Department of Homeland Security  
Washington, DC 20528**Homeland  
Security**

March 19, 2007

Karen J. Mathis, Esquire  
President  
American Bar Association  
321 North Clark Street  
Chicago, Illinois 60610

Dear Ms. Mathis:

Thank you for your January 31, 2007 letter expressing the American Bar Association's (ABA) support for the *Petition to Initiate Rule-Making* recently filed on behalf of immigration detainees and alien advocacy groups by the Yale Law School. As your letter notes, this petition requests that the Department of Homeland Security (DHS) formally codify the U.S. Immigration and Customs Enforcement (ICE) National Detention Standards (NDS) into the U.S. Code of Federal Regulations.

An important priority for DHS is to ensure full NDS compliance by ICE officials and detention contract service providers. I will, therefore, consider the request that the NDS be formally codified. Of course, an NDS-related rulemaking would be a lengthy and resource-intensive process. Moreover, once implemented, updating the regulation would be equally laborious and protracted, thereby undermining agency flexibility to respond to changed circumstances or crises.

While there are a number of difficult considerations involved in formalizing the NDS into regulatory form, I assure you that DHS is absolutely committed to providing safe, secure, and humane conditions of confinement to all aliens in our custody. The ICE Office of Detention and Removal Operations (DRO) Detention Standards Compliance Unit (DSCU) monitors conditions of confinement to ensure that facilities used for ICE detainees comply with NDS requirements and that facilities maintain conditions of confinement consistent with correctional industry standards and practices. DRO currently uses a combination of headquarters and field office staff to conduct annual standardized reviews of all facilities used to hold ICE detainees. The reviews are based on all 38 NDS. Facilities receiving a rating of "Deficient" or "At Risk" are inspected semi-annually. All facilities are required to complete a plan of action for correcting deficiencies identified during the review process. Further, ICE requires that its Service Processing Centers, Contract Detention Facilities, and Inter-Governmental Service Agreement facilities maintain accreditation by the American Correctional Association as a means of maintaining an independent verification of performance quality.

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In addition, DHS has undertaken a number of positive steps recently to review the NDS and ensure NDS compliance. First, DRO is currently engaged in a major initiative to improve the delivery of care to detainees by converting the NDS to a performance-based model, consistent with the approach used by the American Correctional Association. The revised standards, expected practices, and outcome measures will enable ICE to qualitatively monitor activities and quantitatively measure outcomes over time.

DHS is undertaking other efforts as well. As ICE's detention capacity increases, its detainee population increases in demographic complexity. Certain populations, such as alien children and families, present special considerations and raise unique challenges for DHS. ICE is, therefore, in the process of reviewing its secure and non-secure juvenile standards and developing family-specific detention standards. DHS is determined to ensure that the unique educational, recreational, nutritional, health care, relational, and custody consideration issues associated with these special populations are appropriately addressed. In addition to these ongoing initiatives to optimize the treatment of ICE detainees, and to ensure independent internal management controls, ICE's Office of Professional Responsibility is creating a Detention Facilities Inspection Group (DFIG) within its Management Inspections Unit to independently validate detention compliance reviews conducted by DRO. The DFIG will provide quality assurance over the review process, ensuring consistency in application of the NDS, and verifying corrective action. To increase the transparency of its annual facility review process, ICE will also begin publishing an internal semi-annual report on reviews conducted during the previous six months. The report will identify facilities reviewed, deficiencies identified, and general trends in service provider performance and the detained population.

The Department of Homeland Security appreciates the ABA's past contributions to the successful promulgation of the current NDS and looks forward to working with the ABA in the future should we conclude that rulemaking is, in fact, appropriate. We also hope that you will acknowledge the considerable efforts we are already making to care for the ICE detainee population.

Sincerely,



Michael Chertoff