

5.3 Marriage Requests

I. Purpose and Scope

This detention standard ensures that each marriage request from an ICE/ERO detainee receives a case-by-case review, based on internal guidelines for approval of such requests.

The guidelines provided in this Detention Standard are internal and shall not be construed as creating rights for detainees or other persons or preventing the facility administrator from exercising discretion in conducting the required case-by-case review.

This detention standard applies to the following types of facilities housing ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities. Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

II. Expected Outcomes

The expected outcomes of this detention

standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Each marriage request from an ICE/ERO detainee shall be reviewed on a case-by-case basis.
2. Consistency in decisions to approve or deny a marriage request shall be achieved by the application of guidelines.
3. Ordinarily, a detainee’s request for permission to marry shall be granted.

III. Standards Affected

This detention standard replaces “Marriage Requests” dated 12/2/2008.

IV. References

None

V. Expected Practices

A. Written Policy and Procedures Required

All facilities shall have in place written policy and procedures to enable eligible ICE/ERO detainees to marry.

B. Detainee Notification

The *National Detainee Handbook* and local facility supplement, provided each detainee upon admittance, shall advise detainees of the facility’s marriage request procedures.

C. Detainee Request to Marry

A detainee, or his/her legal representative, may submit to the facility administrator or Field Office Director (FOD) a written request

for permission to marry.

The request must:

1. specifically express that the detainee is legally eligible to be married in the state where the detainee is being held; and
2. be accompanied by the intended spouse's written affirmation of his/her intent to marry the detainee.

D. Consideration and Approval

1. SPCs and CDFs

The facility administrator may approve or deny a marriage request, using the guidelines that follow. Approval or denial of all marriage requests should be reviewed by the FOD or designee.

- a. Any facility administrator's decision to deny a marriage request shall be forwarded to the respective FOD for review.*
- b. The Field Office Director (or designee), after whatever consultations he or she believes are advisable, may uphold or reverse the facility administrator's denial.*

If the request is denied, ICE/ERO shall notify the detainee, in writing, of the reasons for the denial within 30 days from the date of the request.

Detainees may seek legal assistance throughout the marriage application process.

3. IGSA

The facility administrator shall notify and consult the respective Assistant Field Office Director, who shall use the guidelines below to approve or deny the request. Approval or

denial of all marriage requests should be reviewed by the FOD (or designee).

- a. The FOD (or designee), after whatever consultations he or she believes are advisable, may uphold or reverse the facility administrator's denial.
- b. If the request is approved, the marriage ceremony shall take place at the facility. If necessary under some extraordinary circumstances, ICE/ERO may assume temporary custody of the detainee for the marriage ceremony.

If the request is denied, ICE/ERO shall notify the detainee, in writing, of the reasons for the denial within 30 days from the date of the request.

Detainees may seek legal assistance throughout the marriage application process.

E. Guidelines

When a detainee requests permission to marry:

1. The facility administrator or Field Office Director shall consider each marriage request on a case-by-case basis.
2. A detainee's request for permission to marry shall be denied if:
 - a. the detainee is not legally eligible to be married;
 - b. the detainee is not mentally competent, as determined by a qualified medical practitioner;
 - c. the intended spouse has not affirmed, in writing, his/her intent to marry the detainee;

- d. the marriage would present a threat to the security or orderly operation of the facility; or
- e. there are compelling government interests for denying the request.

If the request is denied, the detainee may file an appeal to the Field Office Director.

3. When a request is approved, the detainee, legal representative or other individual(s) acting on his/her behalf must make all the marriage arrangements, including, but not limited to:
 - a. blood tests;
 - b. obtaining the marriage license; and
 - c. retaining an official to perform the marriage ceremony.

ICE/ERO personnel shall not participate in making marriage arrangements nor serve as witnesses in the ceremony.

4. The facility administrator or designated Field Office staff shall notify the detainee in a timely manner of a time and place for the ceremony.

The marriage may not interrupt regular or scheduled processing or action in a detainee’s legal case. Specifically, it may neither interrupt nor stay any hearing, transfer to another facility or removal from the United States.

Transfers shall not occur solely to prevent a marriage.

5. Ordinarily, arrangements made by the detainee or persons acting on his/her behalf shall be accommodated, consistent with the security and orderly operation of the facility, according to the following stipulations:

- a. the ceremony shall take place inside the facility; the detainee may not leave the facility to make arrangements;
- b. all expenses relating to the marriage shall be borne by the detainee or person(s) acting on his/her behalf; and
- c. the ceremony shall be private with no media publicity. Only individuals essential for the marriage ceremony, such as required witnesses may attend.

The facility administrator or FOD reserves the right of final approval concerning the time, place and manner of all arrangements.

F. Revocation of Approval

The FOD may revoke approval of a marriage request for good cause in writing to the detainee. In such instances, the detainee may file an appeal.

G. Documentation in Detention File

Once the marriage has taken place, the facility administrator shall forward original copies of all documentation to the detainee’s A-file and maintain copies in the facility’s detention file.