

5.1 Correspondence and Other Mail

I. Purpose and Scope

This detention standard ensures that detainees shall be able to correspond with their families, the community, legal representatives, government offices and consular officials consistent with the safe and orderly operation of the facility.

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. Detainees shall be able to correspond with their families, the community, legal representatives, government offices and consular officials.
2. Detainees shall be notified of the facility’s rules on correspondence and other mail through the detainee handbook, or supplement, provided to each detainee upon admittance.
3. The amount and content of correspondence detainees send at their own expense shall not be limited, except to protect public safety or facility security and order.
4. Indigent detainees shall receive a specified postage allowance to maintain community ties and necessary postage for privileged correspondence.
5. Detainees shall have access to general interest publications.
6. Incoming and outgoing mail, with the exception of special correspondence or legal mail, shall be opened to inspect for contraband and to intercept cash, checks and money orders.
7. General correspondence shall be read or rejected only to protect the safe, secure and orderly operation of the facility, and detainees shall be notified in writing when correspondence is withheld in part or in full.
8. Detainees shall be permitted to send special correspondence or legal mail to a specified class of persons and organizations, and incoming mail from these persons shall be opened only in the

presence of the detainees (unless waived) to check for contraband (except when contamination is suspected).

9. Incoming and outgoing letters shall be held for no more than 24 hours and packages no more than 48 hours before distribution, excluding weekends, holidays or exceptional circumstances.
10. Detainees in Special Management Units (SMU) shall have the same correspondence privileges as detainees in the general population.
11. The applicable content and procedures in this standard shall be communicated to the detainee in a language or manner the detainee can understand.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

III. Standards Affected

This detention standard replaces “Correspondence and Other Mail” dated 12/2/2008.

VI. References

American Correctional Association 4th Edition, *Standards for Adult Detention*

Facilities: 4-ALDF-5B-05, 5B-06, 5B-07, 5B-08, 5B-09, 5B-10, 2A-27, 2A-60, 6A-09.

V. Expected Practices

A. General

Each facility shall have written policy and procedures concerning detainee correspondence and other mail.

The quantity of correspondence a detainee may receive or send at his/her own expense shall not be limited. Facilities shall not limit detainees to postcards and shall allow envelope mailings. For reasons of safety, security and the orderly operation of the facility, non-correspondence mail, such as packages and publications, shall be subject to certain restrictions.

B. Indigent Detainees

Ordinarily, a detainee is considered “indigent” if he/she has less than \$15.00 in his/her account. Facilities shall make a timely determination as to whether a detainee is indigent.

Each facility shall have written procedures that explain how indigent detainees can request postage at government expense. Such procedures shall also be posted in a common area where all detainees can view them.

At government expense, as determined by ICE/ERO, indigent detainees shall be permitted to post a reasonable amount of mail each calendar week (see “J. Postage Costs”) below, including the following:

1. an unlimited amount of special correspondence or legal mail, within

reason;

2. three pieces of general correspondence; and/or
3. packages as deemed necessary by ICE/ERO.

C. Detainee Notification

The facility shall notify detainees of its rules on correspondence and other mail through the detainee handbook, or supplement, provided to each detainee upon admittance. At a minimum, the notification shall specify:

1. That a detainee may receive mail, the mailing address of the facility, and instructions on how envelopes shall be addressed;
2. That a detainee may send mail, the procedure for sending mail, and instructions on how outgoing mail must be addressed;
3. That general correspondence and other mail addressed to detainees shall be opened and inspected in the detainee's presence, unless the facility administrator authorizes inspection without the detainee's presence for security reasons;
4. The definition of special correspondence or legal mail, including instructions on the proper labeling as "special correspondence" or "legal mail" to ensure that it is treated as privileged mail; the notification shall clearly state that it is the detainee's responsibility to inform senders of the labeling requirement;
5. That incoming special correspondence or legal mail may only be opened in the detainee's presence, and may be inspected for contraband, but not read, and that outgoing special correspondence or legal mail shall not be opened, inspected or read;
6. That packages may neither be sent nor received without advance arrangements approved by the facility administrator, as well as information regarding how to obtain such approval;
7. A description of mail which may be rejected by the facility and which the detainee shall not be permitted to keep in his/her possession;
8. That identity documents, such as passports, birth certificates, etc., in a detainee's possession are contraband and may be used by ICE/ERO as evidence against the detainee or for other purposes authorized by law (however, upon request, the detainee shall be provided a copy of each document, certified by an ICE/ERO officer to be a true and correct copy; the facility shall consult ICE/ERO with any and all requests for identity documents);
9. The procedure to obtain writing implements, paper and envelopes; and
10. The procedure for purchasing postage (if any), and the rules for providing indigent and certain other detainees free postage.

The rules notification shall be posted in each housing area.

The facility shall provide key information to detainees in languages spoken by any significant portion of the facility's detainee

population. Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

D. Processing

Detainee correspondence and other mail shall be delivered to the detainee and to the postal service on regular schedules.

1. Incoming correspondence shall be distributed to detainees within 24 hours (one business day) of receipt by the facility.
2. Outgoing correspondence shall be delivered to the postal service no later than the day after it is received by facility staff or placed by the detainee in a designated mail depository, excluding weekends and holidays.
3. An exception may be made for correspondence or other mail that requires special handling for security purposes. For example, in exceptional circumstances, special correspondence may be held for 48 hours, to verify the status of the addressee or sender.

As a routine matter, incoming mail shall be distributed to detainees on the day received by the facility. Incoming priority, overnight, certified mail and deliveries from a private package delivery service, etc., shall be recorded with detainee signatures in a logbook maintained by the facility.

E. Packages

Each facility shall implement policies and procedures concerning detainee packages.

Detainees shall not be allowed to receive or send packages without advance arrangements approved by the facility administrator. The detainee shall pay postage for packages and oversized or overweight mail.

F. Inspection of Incoming Correspondence and Other Mail

1. General Correspondence and Other Mail

All facilities shall implement procedures for the inspection of all incoming general correspondence and other mail (including packages and publications) for contraband.

Staff shall open and inspect incoming general correspondence and other mail (including packages and publications) in the presence of the detainee unless otherwise authorized by the facility administrator. Incoming general correspondence may be read to the extent necessary to maintain security, as authorized by the facility administrator.

Inspection is generally for the purpose of detecting contraband. Reading of mail, which requires approval of the facility administrator, may be conducted at random. Mail may also be read when a specific security concern arises with respect to an individual detainee, including, but not limited to, for obtaining information such as escape plots, plans to commit illegal acts and plans to violate institution rules.

2. Special Correspondence or Legal Mail

“Special correspondence” or “legal mail” shall be defined as the term for detainees’ written communications to or from any of the following:

- a. private attorneys and other legal representatives;
- b. government attorneys;
- c. judges and courts;
- d. embassies and consulates;
- e. the president and vice president of the United States;
- f. members of Congress;
- g. the Department of Justice (including the DOJ Office of the Inspector General);
- h. the Department of Homeland Security (including U.S. Immigration and Customs Enforcement, ICE Health Services Corps, the Office of Enforcement and Removal Operations, the DHS Office for Civil Rights and Civil Liberties, and the DHS Office of the Inspector General);
- i. outside health care professionals;
- j. administrators of grievance systems; and
- k. representatives of the news media.

Correspondence shall only be treated as special correspondence or legal mail if the title and office of the sender (for incoming correspondence) or addressee (for outgoing correspondence) are unambiguously identified on the envelope, and the envelope is labeled “special correspondence” or “legal mail.”

All facilities shall implement procedures for inspecting for contraband, in the presence of the detainee, all special correspondence or legal mail. Detainees shall sign a logbook upon receipt of special correspondence and/or legal mail to verify that the special

correspondence or legal mail was opened in their presence.

Staff shall neither read nor copy special correspondence or legal mail. The inspection shall be limited to the purposes of detecting physical contraband and confirming that any enclosures qualify as special correspondence or legal mail.

G. Inspection of Outgoing Correspondence and Other Mail

1. General Correspondence and Other Mail

Outgoing general correspondence and other mail may be inspected or read if:

- a. the addressee is another detainee; or
- b. there is evidence the item might present a threat to the facility’s secure or orderly operation, endanger the recipient or the public or facilitate criminal activity.

The detainee must be present when the correspondence or other mail, including packages, is inspected, unless otherwise authorized by the facility administrator.

2. Special Correspondence or Legal Mail

Staff shall neither read nor copy outgoing special correspondence or legal mail. The inspection shall be limited to the purposes of detecting physical contraband and confirming that any enclosures qualify as special correspondence or legal mail.

Staff shall treat outgoing correspondence as special correspondence or legal mail only if the name, title and office of the recipient are clearly identified on the envelope and the envelope is labeled “special correspondence” or “legal mail.”

H. Rejection of Incoming and Outgoing Mail

All facilities shall implement policies and procedures addressing acceptable and non-acceptable mail. Detainees may receive as correspondence any material reasonably necessary for the detainee to present his/her legal claim, in accordance with this standard.

Incoming and outgoing general correspondence and other mail may be rejected to protect the security, good order or discipline of the institution; to protect the public; or to deter criminal activity.

When incoming or outgoing mail is confiscated or withheld (in whole or in part), the detainee shall be notified and given a receipt.

The facility administrator shall ordinarily consult a religious authority before confiscation of a religious item that constitutes “soft” contraband.

Correspondence and publications that may be rejected include, but are not limited to, the following.

1. Material depicting activities that present a significant risk of physical violence or group disruption (e.g., material with subjects of self-defense or survival, weaponry, armaments, explosives or incendiary devices); however, note that newspaper articles that depict or describe violence in a detainee’s country of origin may be relevant to a detainee’s legal case and should not automatically be considered contraband;

2. Information regarding escape plots, or plans to commit illegal activities, or to violate ICE/ERO rules or facility guidelines;
3. Information regarding the production of drugs or alcohol;
4. Sexually explicit material that is obscene or prurient in nature;
5. Threats, extortion, obscenity or gratuitous profanity;
6. Cryptographic or other surreptitious code that may be used as a form of communication; or
7. Other contraband (any package received without the facility administrator’s prior authorization is considered contraband).

Both sender and addressee shall be provided written notice, signed by the facility administrator, with explanation, when the facility rejects incoming or outgoing mail. Rejected mail shall be considered contraband and handled as detailed in the next section of this standard.

A detainee may appeal rejection of correspondence through the Detainee Grievance System.

I. Contraband Recording and Handling

When an officer finds an item that must be removed from a detainee’s mail, he/she shall make a written record that includes:

1. the detainee’s name and A-number;
2. the name of the sender and recipient;
3. a description of the mail in question;
4. a description of the action taken and the

reason for it;

5. the disposition of the item and the date of disposition; and
6. the officer's signature.

Prohibited items discovered in the mail shall be handled as follows:

1. A receipt shall be issued to the detainee for all cash, which shall be safeguarded and credited to the detainee's account in accordance with standard "2.5 Funds and Personal Property."
2. Identity documents (e.g., passports, birth certificates) shall be placed in the detainee's A-file and, upon request, the detainee shall be provided with a copy of the document, certified by an ICE/ERO officer to be a true and correct copy.
3. Other prohibited items found in the mail shall be handled in accordance with standard "2.3 Contraband"; however, at the discretion of the facility administrator, soft contraband may be returned to the sender.
4. The facility administrator shall ensure that facility records of the discovery and disposition of contraband are accurate and current.

J. Postage Costs

1. The facility shall not limit the amount of correspondence detainees may send at their own expense, except to protect public safety or facility security and order.
2. The facility shall provide a postage allowance at government expense under two circumstances:

- a. to indigent detainees only; or
- b. to all detainees, if the facility does not have a system for detainees to purchase stamps.

3. Free postage is generally limited to letters weighing one ounce or less, with exceptions allowed for special correspondence; however, in compelling circumstances, the facility may also provide free postage for general correspondence and other mail.
4. Detainees who qualify for a postage allowance as defined above shall be permitted to mail, at government expense, the following:
 - a. a reasonable amount of mail each week, including at least three pieces of general correspondence;
 - b. an unlimited amount of correspondence related to a legal matter, within reason, including correspondence to a legal representative, free legal service provider, any court, opposing counsel or to a consulate, potential legal representative and any court, as determined by the facility administrator; and
 - c. packages containing personal property, when the facility administrator determines that storage space is limited and that mailing the property is in the government's best interest. See standard "2.5 Funds and Personal Property" for detailed information; and

K. Writing Implements, Paper and Envelopes

The facility shall provide writing paper, writing implements and standard sized envelopes at no cost to detainees. Special sized envelopes may be provided to detainees at their cost.

L. Detainees in Special Management Units (SMU)

All facilities shall have written policy and procedures regarding mail privileges for detainees housed in an SMU.

Detainees in administrative or disciplinary segregation shall have the same correspondence privileges as detainees in the general population.

M. Correspondence with Representative of the News Media

A detainee may use special correspondence to communicate with representatives of news media.

A detainee may not receive compensation or anything of value for correspondence with news media, including, but not limited to, publishing under a byline. A detainee may not act as a reporter.

Representatives of news media may initiate correspondence with a detainee; however, such correspondence shall be treated as

special correspondence only if the envelope is properly addressed with the name, title and office of the media representative and is clearly labeled “special correspondence.”

N. Notaries, Certified Mail and Miscellaneous Needs Associated With Legal Matters

If a detainee without legal representation requests certain services in connection with a legal matter, such as notary public or certified mail, and has no family member, friend or community organization to provide assistance, the facility shall consult with ICE/ERO to provide the necessary services and shall assist the detainee in a timely manner.

If it is unclear whether the requested service is necessary in pursuit of a legal matter, the respective ICE Office of Chief Counsel shall be consulted.

O. Facsimile Communication

When timely communication through the mail is not possible, the facility administrator may in his/her discretion allow for a reasonable amount of communication by means of facsimile device between the detainee and his/her designated legal representatives.