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Inspections and Detention Oversight Division

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**Office of Detention Oversight
National Detention Standards**

Enforcement and Removal Operations

ERO Saint Paul Field Office

Sherburne County Jail

Elk River, MN

August 28-30, 2018

**COMPLIANCE INSPECTION
for the
Sherburne County Jail
Elk River, Minnesota**

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COMPLIANCE INSPECTION TEAM MEMBERS



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FACILITY OVERVIEW

The Office of Detention Oversight (ODO) conducted a compliance inspection of the Sherburne County Jail (SCJ) in Elk River, Minnesota, from August 28-30, 2018.¹ The SCJ opened in 1979 and is owned by the County of Sherburne. The Office of Enforcement and Removal Operations (ERO) began housing detainees at SCJ pursuant to an Inter-Governmental Agreement (IGA), between ICE and the Sherburne County Jail (SCJ) in April of 1993.

██████████ staff are assigned to the facility. The County Sheriff is the highest-ranking official at SCJ and is assisted by a jail administrator. Food Service is provided by Summit Food Service Management and medical care is provided by MEnD Correctional Care (MCC). The facility operates under the National Detention Standard (NDS) 2000 and is not contractually obligated to comply with the ICE Performance-Based National Detention Standards (PBND) 2011 Sexual Abuse and Assault Prevention and Intervention Standard. The SCJ was accredited by the American Correctional Association (ACA) as of August 21, 2017.

Capacity and Population Statistics	Quantity
ICE Detainee Bed Capacity ²	300
Average Daily ICE Detainee Population ³	██████████
Male Detainee Population (as of 9/17/2018)	██████████
Female Detainee Population (as of 9/17/2018)	██████████

In July 2014, ODO conducted an inspection of SCJ reviewing a total of 15 standards and found the facility compliant with eight of those standards. ODO found 16 deficiencies in the remaining seven standards, broken down as follows: Access to Legal Materials (2), Detainee Grievance Procedures (3), Food Service (2), Funds and Personal Property (3), Suicide Prevention and Intervention (1), Telephone Access (3), and Use of Force (2).

¹ This facility holds male detainees for periods greater than 72 hours.

² Data Source: ERO Facility Questionnaire as of August 15, 2018.

³ *Ibid.*

FY 2018 FINDINGS BY NDS 2000 MAJOR CATEGORIES

NDS 2000 STANDARDS INSPECTED ⁴	DEFICIENCIES
Part 1 – Detainee Services	
Access to Legal Material	0
Admission and Release	1
Detainee Classification System	6
Detainee Grievance Procedures	0
Detainee Handbook	0
Food Service	3
Funds and Personal Property	0
Staff-Detainee Communication	0
Telephone Access	1
Sub-Total	11
Part 2 – Security and Control	
Environmental Health and Safety	3
Special Management Unit (Administrative Segregation)	1
Special Management Unit (Disciplinary Segregation)	1
Use of Force	3
Sub-Total	8
Part 3 – Health Services	
Medical Care	1
Suicide Prevention and Intervention	0
Sub-Total	1
PBNDS 2011 Standard Inspected	
Sexual Abuse and Assault Prevention and Intervention (SAAPI)	0
Sub-Total	0
Total Deficiencies	20

⁴ For greater detail on ODO's findings, see the *Compliance Inspection Findings* section of this report.

COMPLIANCE INSPECTION PROCESS

ODO conducts oversight inspections of ICE detention facilities with an average daily population greater than ten and where detainees are housed for over 72-hours to assess compliance with ICE national detention standards. These inspections focus solely on facility compliance with detention standards that directly affect detainee life, health, safety, and/or well-being.⁵ ODO identifies violations linked to ICE detention standards, ICE policies, or operational procedures as *deficiencies*. ODO highlights instances when the facility resolves deficiencies prior to completion of the ODO inspection; these corrective actions are annotated with “C” under the Inspection Findings section of this report.

At the conclusion of each inspection, ODO holds a closeout briefing with facility and local ERO officials to discuss preliminary findings. A summary of these findings is also shared with ERO management officials. Thereafter, ODO provides ICE leadership with a final compliance inspection report to (i) assist ERO in developing and initiating corrective action plans and (ii) provide senior executives with an independent assessment of facility operations. Additionally, ODO findings inform ICE executive management decision making in better allocating resources across the agency’s entire detention inventory.

⁵ ODO reviews the facility’s compliance with selected standards in their entirety.

DETAINEE RELATIONS

ODO interviewed fourteen (14) detainees, all of whom were males from a variety of classification levels, to assess the conditions of confinement at SCJ. Interview participation was voluntary, and none of the detainees expressed allegations of abuse, discrimination, or mistreatment. Most of the detainees reported being satisfied with facility services except for the below concerns.

Medical Care: Five detainees stated that they were required to pay for over-the-counter medication.

- Action Taken: ODO reviewed documentation regarding SCJ's medical care and spoke with SCJ and MCC staff. ODO confirmed ICE detainees were being charged for over-the-counter medication in contradiction to the facility contract. ODO addressed this issue with SCJ and MCC staff and corrective action was immediately initiated to stop charging ICE detainees for over-the-counter medication. *See* the Compliance Inspection Findings: Medical Care section of this report for further information.

Medical Care: One detainee complained the doctor recommended surgery for his hernia, but the procedure was denied by ICE/SCJ.

- Action Taken: ODO reviewed medical records and spoke with healthcare staff and determined the Medical Payment Authorization Request (MedPAR) was denied by the ICE Immigration Health Service Corps (IHSC) as the hernia surgery was deemed elective and per policy ICE will not pay for elective surgery. While the hernia surgery was deemed non-emergent at the time of MedPAR submission, ODO recommends medical staff follow up with the detainee regularly should there be a change in his condition that would warrant further action and revisit the issue with IHSA as appropriate.

Environmental Health and Safety: Three detainees complained they were being charged for barber services.

- Action Taken: ODO discussed the issue with facility staff and confirmed detainees are charged \$2 for barbering services to cover the repair and replacement cost of barbering supplies. *See* the Compliance Inspection Findings: Environmental Health and Safety (EH&S) section of this report for further information.

COMPLIANCE INSPECTION FINDINGS

DETAINEE SERVICES

ACCESS TO LEGAL MATERIAL (ALM)

The facility utilizes a digital scanner called Eye Pal Reader that allows the facility to scan documents and instantly translate them into the detainee's language--ODO cites this as a **Best Practice**.

ADMISSION AND RELEASE (A&R)

ODO confirmed the initial issuance of hygiene supplies is provided at no charge to detainees; however, in accordance with SCJ policy and the detainee handbook, after the initial issuance non-indigent detainees must order shampoo, toothpaste or a toothbrush from the commissary and pay for the replenishment of these items (**Deficiency A&R-1⁶**). ODO interviewed staff and detainees and found the policy of charging non-indigent detainees for hygiene supplies is inconsistently applied.

ODO observed the release of three detainees. The detainee's identities were verified by scanning each wristband and comparing the names and photos to the release sheet names to ensure they were the correct detainees. A supervisor then verified the release information. Staff completed appropriate forms, returned personal property and funds and reclaimed facility-issued clothing. ODO noted that legal papers in the possession of each detainee were placed in a clear plastic bag and sealed for transport to prevent damage or loss--ODO cites this as **Best Practice**.

DETAINEE CLASSIFICATION SYSTEM (DCS)

ODO's review of documentation and interviews with staff found ERO does not provide the classification level of detainees on Form I-203, Order to Detain and detainees frequently arrive without Form I-213, Record of Deportable Alien Form which contains the information necessary to properly classify a detainee (**Deficiency DCS-1⁷**). As a result, staff classify detainees without criminal history information using an objective "decision tree" model (**Deficiency DCS-2⁸**). ODO's review of 20 randomly-selected detainee files found one detainee with a history of violent assaults was classified as level 2 (**Deficiency DCS-3⁹**). ODO observed this [REDACTED] detainee with assaultive behavior was housed with [REDACTED] detainees (**Deficiency DCS-4¹⁰**). Additionally, ODO's observation and discussions with staff confirmed [REDACTED] detainees are not escorted

⁶ "Staff shall provide male and female detainees with the items of personal hygiene appropriate for, respectively, men and women. They will replenish supplies as needed." See ICE NDS 2000, Standard, Admission and Release, Section (III)(G).

⁷ "All detainees are classified upon arrival, before being admitted into the general population. INS will provide CDFs and IGSA facilities with the data they need from each detainee's file to complete the classification process." See ICE NDS 2000, Standard, Detainee Classification System, Section (III)(A)(1).

⁸ "If the detainee cannot be classified without certain information that is missing at the time of processing (e.g., results of criminal-record check), the detainee will be kept apart from the general population pending arrival of that data. Upon completion of the classification process possible, the detainee shall (sic) be housed in the general population." See ICE NDS 2000, Standard, Detainee Classification System, Section (III)(A)(2).

⁹ "[REDACTED] - b. May not include any detainee with a pattern or history of violent assaults, whether convicted or not. A pattern is considered established for purposes of this guideline when an arrest record reveals two or more arrests in a five-year period for assault where force was used against another person with the intent to commit bodily injury." See ICE NDS 2000, Standard, Detainee Classification System, Section (III)(E)(2)(b).

¹⁰ "Under no circumstance will a level two detainee with a history of assaultive or combative behavior be placed in a level one housing unit." See ICE NDS 2000, Standard, Detainee Classification System, Section (III)(F)(3).

throughout the facility (**Deficiency DCS-5¹¹**). There is only one housing unit for female detainees regardless of classification level. ODO observed there were two [REDACTED] detainees housed with [REDACTED] detainees during the inspection (**Deficiency DCS-6¹²**).

FOOD SERVICE (FS)

ODO's inspection of the food storage areas found temperatures are maintained for food protection and SCJ utilizes the first-in, first-out stock rotation system. ODO observed three instances where food items were touching the walls and not giving sufficient space to facilitate pest control inspections and prevent damage and contamination (**Deficiency FS-1¹³**). Review of inventory records found official inventories of stores on hand are not conducted annually by the Food Service Director (FSD) and by a member of the financial management staff (**Deficiency FS-2¹⁴**). Inspection of the transport sack meals operation found meals do not include vegetables as an extra item (**Deficiency FS-3¹⁵**).

Also, ODO noted that the program coordinator maintains a Handbook of Religions and Practices to assist staff in determining religious diets, ceremonial meals, and other information to help educate staff regarding unfamiliar religions to meet the needs of the detainee population. The handbook contains information for 28 religions and includes information on the History/Background; Theology/Major Teachings/Belief; Worship/Rites/Ceremonies; Holy Books; Holy Days/Festivals; Work Proscription Days; Fast Days; Dietary Restrictions; Leadership Meetings and Worship; and Sources. This information assists the program staff in determining religious dietary needs as well as determining a detainee's sincerity regarding the need for a religious diet to deter abuse of the religious diet program--ODO cites this as a **Best Practice**.

¹¹ “[REDACTED] detainees are considered a high-risk category requiring medium to maximum security housing. [REDACTED] detainees are always monitored and escorted.” See ICE NDS 2000, Standard, Detainee Classification System, Section (III)(E)(3).

¹² “[REDACTED] detainees will not be housed with [REDACTED] detainees.” See ICE NDS 2000, Standard, Detainee Classification System, Section (III)(F)(1).

¹³ “The following procedures apply when receiving or storing food: ...

d. Store all products at least six inches from the floor and sufficiently far from walls to facilitate pest-control measures. ...

e. Store all products at least six inches from the floor and sufficiently far from walls to facilitate pest-control measures. A painted line may guide pallet placement.

See ICE NDS 2000, Standard, Food Service, Section (III)(J)(3).

¹⁴ “For accurate accounting of all food and supplies, a perpetual inventory record is insufficient. An official inventory of stores on hand must be taken annually with a food service staff member and a member of the financial management staff.” See ICE NDS 2000, Standard, Food Service, Section (III)(J)(6).

¹⁵ “Each sack shall contain at least two sandwiches per meal, of which at least one will be meat (non-pork). Commercial bread or rolls may be preferable because they include preservatives. To ensure freshness, fresh, facility-made bread may be used only if made on the day of lunch preparation. Sandwiches should be individually wrapped or bagged in a secure fashion, to prevent the food from deteriorating. Meats, cheeses, etc., should be freshly sliced the day of sandwich preparation. Leftover cooked meats shall not be used after 24 hours.

In addition, each sack shall include:

1. One piece of fresh fruit or properly packaged canned fruit (paper cup with lid), complete with a plastic spoon; and
2. One ration of a dessert item, e.g., cookies, doughnuts, fruit bars. Extremely perishable items, e.g., fruit pie, cream pie, other items made with milk, cream, or other dairy ingredients shall be excluded; and
3. Such extras as properly packaged fresh vegetables, e.g., celery sticks, carrot sticks, and commercially packaged “snack foods,” e.g., peanut butter crackers, cheese crackers, individual bags of potato chips. These items enhance the overall acceptance of the lunches.”

See ICE NDS 2000, Standard, Food Service, Section (III)(G)(6)(c)(3).

TELEPHONE ACCESS (TA)

ODO found ERO officers check the telephones every Friday to ensure serviceability; however, the serviceability logs are not organized by month (**Deficiency TA-2¹⁶**).

SECURITY AND CONTROL

ENVIRONMENTAL HEALTH AND SAFETY (EH&S)

ODO's inspection found that the detainee housing units and Special Management Unit (SMU) has hard water stains, soap scum, and the metal portions of some shower stalls were corroded and in need of repairs (**Deficiency EH&S-1¹⁷**). Additionally, ODO notes as an **Area of Concern**, the detainee population exceeds the ratio of one shower for every twelve detainees in the female housing area which is contrary to the ACA standards as referenced in NDS 2000.

A review of monthly fire drill reports found that fire drills are conducted [REDACTED] as required by the standard. Further review of the fire drill reports show [REDACTED] are included on the reports; however, the times for [REDACTED] are not documented on the reports (**Deficiency EH&S-2¹⁸**).

The SCJ lacks a dedicated barber shop room due to infrastructure limitations. ODO notes ERO issued a waiver to the facility regarding this issue dated April 19, 2017. As such, barbering is conducted in the detainee living units where there is access to sinks with hot and cold running water. During inspection of these barbering areas, ODO found that sanitation regulations are not posted (**Deficiency EH&S-3¹⁹**). Additionally, ODO notes as an **Area of Concern**, the facility's practice of charging detainees \$2 for haircuts.

¹⁶ "The field office shall maintain the forms in a retrievable format, organized by month, for a 3-year period," *See* (Change Notice: Telephone Access-April 4, 2007).

¹⁷ "Environmental health conditions will be maintained at a level that meets recognized standards of hygiene. The standards include those from the American Correctional Association, the Occupational Safety and Health Administration, the Environmental Protection Agency, the Food and Drug Administration, the National Fire Protection Association's Life Safety Code, and the National Center for Disease Control and Prevention.

The INS HSD or IGSA equivalent activities are designed to assist in the identification and correction of conditions that could adversely impact the health of detainees, employees, and visitors. The INS sanitarian consultant is responsible for developing and implementing policies, procedures, and guidelines pertaining to activities of the environmental health program. These elements are intended to evaluate, and eliminate or control as necessary, both sources and modes of transmission of agents or vectors of communicable disease and of injuries. The sanitation consultant will conduct special investigations and comprehensive surveys of environmental health conditions. Advisory, consultative, inspection and training services regarding environmental health conditions will also be provided through the sanitarian consultant.

The medical facility HSA is responsible for implementing a program that will assist in maintaining a high level of environmental sanitation. In consultation with the sanitarian consultant, they will provide recommendations to the INS OIC concerning environmental health conditions." *See* ICE NDS 2000, Standard, Environmental Health and Safety, Section (III)(R)(1).

¹⁸ [REDACTED] fire drills will be conducted and documented separately in each department. ...

c. [REDACTED]

See ICE NDS 2000, Standard, Environmental Health and Safety, Section (III)(L)(4)(c).

¹⁹ "Each barbershop will have detailed hair care sanitation regulations posted in a conspicuous location for the use of all hair care personnel and detainees." *See* ICE NDS 2000, Standard, Environmental Health and Safety, Section (III)(P)(4).

SPECIAL MANAGEMENT UNIT (SMU-AS)

During inspection of the SMU-Administrative Segregation (AS), ODO noted that the SMU-AS housing area was appropriately climate controlled and ventilated; however, lighting throughout the unit was very dim hindering observation of the cells (**Deficiency SMU AS-1²⁰**).

SPECIAL MANAGEMENT UNIT (SMU-DS)

During inspection of the SMU-Disciplinary Segregation (DS), ODO found that the SMU-DS housing area was appropriately climate controlled and ventilated; however, lighting throughout the unit was also very dim hindering observation of the cells (**Deficiency SMU DS-1²¹**).

USE OF FORCE (UOF)

Hand-held video cameras are maintained in the [REDACTED] ODO observed they are stored on continual chargers and ready for use; however, the facility administrator has not assigned the responsibility for maintaining cameras and other video equipment, ensuring all parts are in working order, and keeping back-up supplies on hand in one or more post orders (**Deficiency UOF-1²²**). ODO interviewed staff and reviewed documentation and found there were 13 immediate and two calculated UOF incidents involving detainees during the year preceding the inspection. ODO's review of documentation found insufficient video documentation in both calculated UOF incidents. In one instance, the videotaping did not commence until the incident was almost completed and did not include the introduction by team leader, faces of all team members, confrontation avoidance, close-up of detainee's body during medical exam, and debriefing (**Deficiency UOF-2²³**). In the second calculated use of force incident, the videotape could not be located. ODO reviewed the written documentation of this incident staff participating in the incident indicated the incident was video-recorded (**Deficiency UOF-3²⁴**).

²⁰ "The quarters used for segregation must be well ventilated, adequately lit, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. The beds shall be securely fastened to the cell floor or wall." See ICE NDS 2000, Standard, Special Management Unit, Administrative Segregation, Section (III)(D)(6).

²¹ "The quarters used for segregation must be well ventilated, adequately lit, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. The beds shall be securely fastened to the cell floor or wall." See ICE NDS 2000, Standard, Special Management Unit, Disciplinary Segregation, Section (III)(D)(6).

²² "The OIC shall designate responsibility for maintaining the video camera(s) and other video equipment. This shall include regularly scheduled testing to ensure all parts, including batteries, are in working order; and keeping back-up supplies on hand (batteries, tapes, lens-cleaners, etc.). This responsibility shall be incorporated into post orders." See ICE NDS 2000, Standard, Use of Force, Section (III)(A)(4)(1).

²³ "Calculated-use-of-force videotape will be edited as follows:

1. Introduction by Team Leader, stating facility name, location, time, date, etc.; describing the incident that led to the calculated use of force; and naming the video-camera operator and other staff present.
2. Faces of all team members briefly appear ([REDACTED]) one at a time, identified by name and title.
3. Team Leader offering detainee last chance to cooperate before team action, outlining use-of-force procedures, engaging in confrontation-avoidance, and issuing use-of-force order.
4. Entire tape of Use-of-Force Team operation, unedited, until detainee in restraints.
5. Close-ups of detainee's body during medical exam, focusing on the presence/absence of injuries; staff injuries, if any, described but not shown
6. Debriefing, including full discussion/analysis/assessment of incident."

See ICE NDS 2000, Standard, Use of Force, Section (III)(A)(4)(g).

²⁴ "The videotape shall be catalogued and preserved until no longer needed, but no less than 30 months after its last documented use. In the event of litigation, the facility will retain the tape a minimum of six months after its conclusion/resolution." See ICE NDS 2000, Standard, Use of Force, Section (III)(4)(h).

HEALTH SERVICES

MEDICAL CARE (MC)

During the inspection, ODO found that detainees were being charged for over-the-counter medications, in violation of the facility contract which stipulated that the service provider was responsible for paying the costs of all over-the-counter medication (**Deficiency MC-1²⁵**). Both SCJ and MCC administration were informed of this matter.

- *Corrective Action:* SCJ leadership immediately issued a memo to staff during the inspection, informing them that ICE detainees would no longer be charged for over-the-counter medication. Steps were also taken to begin the process of refunding any currently held ICE detainees who had previously been charged.

CONCLUSION

During this inspection, ODO reviewed the facility's compliance with 16 standards under the NDS 2000 and found the facility compliant with seven standards. ODO found 20 deficiencies in the remaining nine standards. ODO commends the facility for the three **Best Practices** identified earlier in this report. While facility staff was quick to address Deficiency MC-1 [charging for over-the-counter medication], SCJ leadership disagreed with ODO's concerns regarding charging detainees for barbering services. ODO confirmed this practice is contrary to the Detention and Standards Compliance Unit's reading of the NDS. ODO recommends the local ERO field office work with the facility to address this area of concern as well as all remaining deficiencies as applicable, and in accordance with contractual requirements.

Compliance Inspection Results	FY 2014 (NDS 2000)	FY 2018 (NDS 2000)
Standards Reviewed	15	16
Deficient Standards	7	9
Overall Number of Deficiencies	16	20
Corrective Action	0	1
Areas of Concern	0	2
Best Practices	1	3

²⁵ "The Service Provider shall be responsible for providing health care services for ICE detainees at the Facility in accordance with the NDS 2000, NCCHC and/or the ACA standards that are in place at the time of this agreement, including but not limited to; intake arrival screening, infectious disease screening and treatment, emergent, acute and chronic care, on-site sick call, dental services, and mental health services. Also required is over-the-counter and prescription medications per the current ICE Health Service Corps (IHSC) Formulary FY 2016 and IHSC form 067 for approval of non-formulary medications or Equivalent." See Contract IGSA 70CDCR18DIG000010, Article 6. Healthcare Services.