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Office of Detention Oversight
Compliance Inspection

Enforcement and Removal Operations
ERO St. Louis Field Office

Sherburne County Jail
Elk River, Minnesota

December 14-17, 2020

**COMPLIANCE INSPECTION
of the
SHERBURNE COUNTY JAIL
Elk River, Minnesota**

TABLE OF CONTENTS

FACILITY OVERVIEW	4
COMPLIANCE INSPECTION PROCESS	5
FINDINGS BY NATIONAL DETENTION STANDARDS 2019 MAJOR CATEGORIES	6
DETAINEE RELATIONS	7
COMPLIANCE INSPECTION FINDINGS	10
SECURITY	10
ADMISSION AND RELEASE (A&R)	10
CUSTODY CLASSIFICATION SYSTEM (CCS)	10
USE OF FORCE AND RESTRAINTS (UOF&R)	10
SPECIAL MANAGEMENT UNITS (SMU)	11
SEXUAL ABUSE AND ASSAULT PREVENTION AND INTERVENTION (SAAPI)	11
CARE	11
HUNGER STRIKES (HS)	11
MEDICAL CARE (MC)	11
DISABILITY IDENTIFICATION, ASSESSMENT, AND ACCOMMODATION (DIA&A)	12
CONCLUSION	12

COMPLIANCE INSPECTION TEAM MEMBERS

[REDACTED]	Team Lead	ODO
[REDACTED]	Inspections and Compliance Specialist	ODO
[REDACTED]	Inspections and Compliance Specialist	ODO
[REDACTED]	Contractor	Creative Corrections
[REDACTED]	Contractor	Creative Corrections
[REDACTED]	Contractor	Creative Corrections
[REDACTED]	Contractor	Creative Corrections

FACILITY OVERVIEW

The U.S. Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) Office of Detention Oversight (ODO) conducted a compliance inspection of the Sherburne County Jail (SCJ) in Elk River, Minnesota, from December 14 – 17, 2020.¹ The facility opened in 1979 and is owned and operated by Sherburne County. The ICE Office of Enforcement and Removal Operations (ERO) began housing detainees at SCJ in February of 1989 under the oversight of ERO’s Field Office Director (FOD) in St. Louis (ERO St. Louis). The facility operates under the National Detention Standards (NDS) 2019.

ERO has assigned deportation officers (DOs) and a detention services manager to the facility. An SCJ jail commander handles daily facility operations and is supported by █ personnel. Summit provides food services, MENA Correctional Care provides medical care, and Sherburne County provides their own commissary services at the facility. The facility was accredited by the American Correctional Association in August 2017.

Capacity and Population Statistics	Quantity
ICE Detainee Bed Capacity ²	350
Average ICE Detainee Population ³	█
Male Detainee Population (as of 12/14/2020)	█
Female Detainee Population (as of 12/14/2020)	█

During its last inspection, in Fiscal Year (FY) 2020, ODO found 17 deficiencies in the following areas: Custody Classification System (6); Special Management Units (1); Use of Force and Restraints (2); Sexual Abuse and Assault Prevention and Intervention (1); Medical Care (1); Significant Self-harm and Suicide Prevention and Intervention (2); Disability Identification, Assessment, and Accommodation (2); Recreation (1); and Visitation (1).

¹ This facility holds male and female detainees with low, medium-low, medium-high, and high security classification levels for periods longer than 72 hours.

² Data Source: ERO Facility List Report as of December 14, 2020.

³ *Ibid.*

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 longer than 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.⁴

ODO identifies violations of ICE detention standards, ICE policies, or operational procedures as “deficiencies.” ODO also highlights instances in which the facility resolves deficiencies prior to completion of the ODO inspection. Where applicable, these corrective actions are annotated with “C” under the *Compliance Inspection Findings* section of this report.

Upon completion of each inspection, ODO conducts a closeout briefing with facility and local ERO officials to discuss preliminary findings. A summary of these findings is 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. ODO’s findings inform ICE executive management in their decision-making to better allocate resources across the agency’s entire detention inventory.

ODO was unable to conduct an on-site inspection of this facility, as a result of the COVID-19 pandemic and instead, conducted a remote inspection of the facility. During this remote inspection, ODO interviewed facility staff, ERO field office staff, and detainees, reviewed files and detention records, and was able to assess compliance for at least 90 percent or more of the ICE national detention standards reviewed during the inspection.

⁴ ODO reviews the facility’s compliance with selected standards in their entirety.

FINDINGS BY NATIONAL DETENTION STANDARDS 2019 MAJOR CATEGORIES

NDS 2019 Standards Inspected ^{5&6}	Deficiencies
Part 1 – Safety	
Environmental Health and Safety	0
Sub-Total	0
Part 2 – Security	
Admission and Release	1
Custody Classification System	2
Facility Security and Control	0
Funds and Personal Property	0
Use of Force and Restraints	1
Special Management Units	1
Staff-Detainee Communication	0
Sexual Abuse and Assault Prevention and Intervention	2
Sub-Total	7
Part 4 – Care	
Food Service	0
Hunger Strikes	1
Medical Care	3
Significant Self-harm and Suicide Prevention and Intervention	0
Disability Identification, Assessment, and Accommodation	1
Sub-Total	5
Part 5 – Activities	
Religious Practices	0
Telephone Access	0
Sub-Total	0
Part 6 – Justice	
Grievance System	0
Law Libraries and Legal Materials	0
Sub-Total	0
Total Deficiencies	12

⁵ For greater detail on ODO’s findings, see the *Compliance Inspection Findings* section of this report.

⁶ Beginning in FY 2021, ODO added Emergency Plans, Facility Security and Control, Population Counts, Hunger Strikes, and Staff Training as core standards. NDS 2019 does not include Emergency Plans, Population Counts, nor Staff Training as individual standards; however, those specific requirements are resident in other core standards.

DETAINEE RELATIONS

ODO interviewed 12 detainees, who each voluntarily agreed to participate. One detainee made an allegation of sexual assault by another detainee. Most detainees reported satisfaction with facility services except for the concerns listed below. ODO conducted detainee interviews via video teleconference.

Food Service: Nine of the 12 detainees interviewed noted the food was subpar in a number of ways including: small portion sizes, food menu lacked variety (potatoes for every meal, every day), rotten food to include the potatoes and spoiled milk on occasion, lack of fruits and vegetables, and a lack of real meat products.

- Action Taken: ODO interviewed and discussed the food complaints with the food service director (FSD) on December 15, 2020. The FSD provided a registered dietitian's nutritional analysis confirming the portion sizes met or exceeded the Recommended Daily Allowances (RDA) guidelines. A review of the food menus by ODO revealed a rotation of starches to include, rice, potatoes, and pastas throughout the 35-day cycle food menu. The FSD stated the facility did not use fresh potatoes, only dehydrated potatoes, which were rehydrated as close to preparation time as possible to prevent the possibility of spoilage. The FSD stated they had some problems with milk spoilage from a vendor in the past but resolved this issue by contracting with a new vendor. The FSD stated for security reasons, fruits were limited to canned or no peel items (oranges/bananas). The facility rotated applesauce, peaches, pears, and mandarin oranges. The only fresh fruit used were apples. In addition, only canned or frozen vegetables were used. The FSD stated SCJ did not incorporate any tofu into proteins and SCJ did not use pork products. ODO reviewed the food menu, which consisted of ground chicken, turkey, and premade patties (burgers, meatloaf, meatballs, chicken patties, Salisbury steak, chuckwagon hamburger, kielbasa, hot dogs, and cured turkey). The hot dogs had a different blend of chicken, turkey, and beef. ODO determined the SCJ met the NDS 2019 standards for food service.

Medical Care: One detainee stated he was concerned about his vision and had requested to see an eye doctor but received no response from the facility's medical staff.

- Action Taken: ODO requested and reviewed the detainee's medical record. The detainee had his initial nursing assessment completed on November 18, 2020, at which time he indicated he needed reading glasses. The detainee was instructed to purchase reading glasses through the facility kiosk. He was evaluated again on December 8, 2020, for complaints of worsening vision. A visual acuity test was completed, and a referral was placed for an ophthalmology consultation. ODO interviewed the health services administrator/director of nursing (HSA/DON) who stated such appointments were delayed due to COVID. Additionally, she stated the detainee purchased reading glasses from commissary and had them in his possession. ODO confirmed with the associate field office director the detainee was scheduled for an optometrist appointment for January 10, 2021. Additionally, the detainee was advised to follow-up with medical through the sick-call process, as needed.

Staff-Detainee Communication: One detainee complained he did not have any interaction with ICE staff for two months and he could not contact the courts or a lawyer.

- Action Taken: ODO spoke with the DO assigned to the facility and the DO stated he spoke with the detainee on December 15, 2020, and ensured the detainee was able to contact his legal counsel. After discussions with ICE ERO and facility leadership, as well as review of the staff-detainee communication logs, ODO determined the detainee was afforded the same opportunity as all other detainees to speak with ICE during their weekly call-ins but chose not to.

Grievance System: One detainee mentioned the same facility staff member responded to detainee grievances even if the grievance was about the same facility staff member. The detainee stated the grievance responses did not address the stated issues and there was no facility staff accountability.

- Action Taken: ODO reviewed the detainee's record and found no instance of a facility staff member responding to a grievance about themselves. Additionally, ODO spoke with the supervisory detention and deportation officer and the facility's captain responsible for grievances, who confirmed the facility's policy ensured this practice did not occur and had two captains assigned to respond to grievances in the event one was specifically named. Finally, ODO reviewed the facility's grievance policy and confirmed it prohibited facility staff from responding to grievances about themselves.

Sexual Abuse and Assault Prevention and Intervention: One detainee informed the ODO interviewer another male ICE detainee exposed himself to the detainee as he was preparing to take a shower on or about October 29-30, 2020. The detainee explained he immediately reported the incident to a SCJ corrections officer. The detainee stated he was punished for the incident and the two detainees were placed on a "no contact" order. The detainee stated he was moved to the "north side" of the [REDACTED] while the alleged perpetrator was moved to the [REDACTED]. The detainee stated the facility staff informed him they conducted a brief investigation and found no evidence to support his claim. The two detainees were not housed in the same unit after the alleged incident.

- Action Taken: ODO immediately contacted ICE ERO and the facility regarding the allegation to determine what steps the facility had taken. The facility confirmed the detainee reported the incident to them on October 27, 2020, and they immediately separated the detainees, placed them on a "no contact" order, and offered mental health services, which were declined by both detainees. The facility conducted an investigation and determined they could not validate the alleged victim's story; however, the detainees remained on a "no contact" order. On October 28, 2020, SCJ notified ICE ERO of the PREA complaint involving the two ICE detainees. On October 28, 2020, ERO St. Paul notified ICE Health Service Corps, ERO Domestic Operations, and the Joint Intake Center. Due to the delay in the facility reporting the sexual assault allegation to ICE ERO until the next day, ODO determined this was a deficiency, which is annotated below in the Compliance Inspection Findings section of this report.

Additional Concerns: Nine of the twelve detainees interviewed noted when officers of the opposite sex entered the housing units, they did not announce their presence.

- Action Taken: ODO spoke with the SCJ commander and confirmed the facility's policy required all officers of the opposite sex to announce their presence when entering a housing unit. The SCJ commander stated he would reiterate this policy to facility staff to ensure compliance. However, ODO was unable to observe the SCJ commander issue this reiteration to his staff, due to the inspection team being off-site, as a result of the COVID-19 pandemic.

COMPLIANCE INSPECTION FINDINGS

SECURITY

ADMISSION AND RELEASE (A&R)

ODO reviewed SCJ's policy, reviewed the facility's detainee handbook, interviewed the A&R supervisor, reviewed 12 detainee files, and found 12 out of the 12 files did not contain identity documents. ODO confirmed the facility staff did not make nor maintain copies of identity documents for any of the detainee detention files reviewed (**Deficiency A&R-12⁷**).

- *Corrective Action:* On December 17, 2020, SCJ added an addendum to the facility's detainee handbook requiring any identity documents received at SCJ be copied and placed in the detainee detention files and originals be forwarded to ICE/ERO. The SCJ also posted a memorandum in all detainee housing units. SCJ provided copies of the addendum and memorandum to ODO.

CUSTODY CLASSIFICATION SYSTEM (CCS)

ODO reviewed SCJ's policy, interviewed the classification supervisor, reviewed 12 detainee files, and found one out of 12 files did not contain a classification form, which clearly identified the security level of the detainee (both security levels one and two were circled). Additionally, one out of 12 files contained a blank classification form, and one of 12 files did not contain any classification form (**Deficiency CCS-4⁸**).

ODO reviewed SCJ's policy, interviewed the classification supervisor, reviewed housing unit rosters with cell assignments and classification levels identified, and found SCJ did not house detainees according to their classification level. Specifically, ODO found SCJ housed all female detainees together, regardless of classification level (**Deficiency CCS-14⁹**).

USE OF FORCE AND RESTRAINTS (UOF&R)

ODO reviewed SCJ's policy, reviewed seven UOF files, interviewed the training sergeant and jail administration office supervisor, and found five out of seven UOF reports were not prepared

⁷ "Identity documents, such as passports, birth certificates, etc., will be copied for the detention file." See ICE NDS 2019, Standard, Admission and Release, Section (II)(C).

⁸ "The classification system shall ensure: (1) All detainees are classified upon arrival, before being admitted into the general population. (2) All Officers assigned to classification duties shall be trained in the facility's classification process. (3) If a detainee cannot be classified without certain information that is missing at the time of processing, the detainee will be kept apart from the general population pending arrival of that information. (4) A supervisor will review each detainee's classification. (5) A detainee's classification level will determine his/her housing assignment, and how his/her recreational activities, meals, and religious services are managed. (6) Each facility shall establish a system that readily identifies a detainee's classification level, for example, color-coded uniforms. (7) Detainees with special vulnerabilities will be identified and the appropriate accommodations provided." See ICE NDS 2019, Standard, Custody Classification System, Section (II)(A)(1-7).

⁹ "All facilities shall ensure detainees are housed according to their classification level." See ICE NDS 2019, Standard, Custody Classification System, Section (II)(D). **This is a Repeat Deficiency.**

nor included in the files for each of the five incidents, as required (**Deficiency UOF&R-80¹⁰**).

SPECIAL MANAGEMENT UNITS (SMU)

ODO interviewed the classification sergeant and confirmed detainees placed in the SMU were routinely restrained whenever taken out of a SMU cell or during movement around the facility, contrary to the standard (**Deficiency SMU-73¹¹**).

SEXUAL ABUSE AND ASSAULT PREVENTION AND INTERVENTION (SAAPI)

ODO reviewed SCJ's written SAAPI policy and procedures and found it was not reviewed nor approved by ICE/ERO (**Deficiency SAAPI-14¹²**).

During the facility's inspection, a detainee informed ODO of a sexual assault allegation the detainee previously reported to the facility. After reviewing the facility's response to the sexual assault allegation, ODO noted the facility did not promptly report the incident to ICE/ERO (**Deficiency SAAPI-112¹³**).

CARE

HUNGER STRIKES (HS)

ODO reviewed training records for ■ correctional staff and ■ medical staff and found there was no documentation of annual hunger strike training for ■ out of ■ medical staff (**Deficiency HS-1¹⁴**).

MEDICAL CARE (MC)

ODO reviewed training records for ■ registered nurses (RN) and ■ nurse practitioners (NP), who performed dental exams, and found non-dental clinicians were not annually trained on

¹⁰ "Facility staff shall prepare a use of force report for each use of force incident." *See* ICE NDS 2019, Standard, Use of Force and Restraints, Section (II)(J)(1).

¹¹ "Placement in an SMU does not constitute a valid basis for the use of restraints while in the SMU or during movement around the facility. Consistent with Standard 2.8 'Use of Force and Restraints,' restraints should only be used when necessary as a precaution against escape during transfer, for medical reasons (when directed by the medical officer), or to prevent self-injury, injury to others, or serious property damage." *See* ICE NDS 2019, Standard, Special Management Unit, Section (II)(E).

¹² "The facility's written policy and procedures must be reviewed and approved by ICE/ERO." *See* ICE NDS 2019, Standard, Sexual Abuse and Assault Prevention and Intervention, Section (II)(A). **This is a Repeat Deficiency.**

¹³ "When a detainee(s) is alleged to be the perpetrator, it is the facility administrator's responsibility to ensure that the incident is promptly referred to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and reported to ICE/ERO (this notification must go directly to the FOD), which shall report it to the OPR Joint Intake Center." *See* ICE NDS 2019, Standard, Sexual Abuse and Assault Prevention and Intervention, Section (L)(1).

¹⁴ "All staff shall be trained initially and annually thereafter to recognize the signs of a hunger strike, and to implement the procedures for referral for medical assessment and for management of a detainee on a hunger strike." *See* ICE NDS 2019, Standard, Hunger Strikes, Section (II)(A).

performing dental exams by a dentist (**Deficiency MC-45**¹⁵).

ODO reviewed three medical records of detainees on psychotropic medications and found none of the records contained a signed informed consent form specific to the medication they were administered (**Deficiency MC-93**¹⁶).

ODO reviewed the medical records for four female detainees and found none of the records contained a pregnancy test with documented results. In addition, gynecological and obstetrical history was not documented in the initial assessment for four out of four female detainees (**Deficiency MC-138**¹⁷).

DISABILITY IDENTIFICATION, ASSESSMENT, AND ACCOMMODATION (DIA&A)

ODO reviewed the facility's orientation program and found it did not notify nor inform detainees about the facility's disability accommodations policy, including their right to request reasonable accommodations, and how to make such a request in a language and/or manner they can understand (**DIA&A-50**¹⁸).

CONCLUSION

During this inspection, ODO assessed the facility's compliance with 18 standards under NDS 2019 and found the facility in compliance with ten of those standards. ODO found 12 deficiencies in the remaining eight standards. ODO commends facility staff for their responsiveness during this inspection.

ODO recommends ERO work with the facility to resolve any deficiencies that remain outstanding in accordance with contractual obligations.

¹⁵ "If no on-site dentist is available, the initial dental screening may be performed by a physician, physician assistant, nurse practitioner, or registered nurse. Such non-dental clinicians shall be trained annually on how to conduct the exam by a dentist." See ICE NDS 2019, Standard, Medical Care, Section (II)(H).

¹⁶ "Prior to the administration of psychotropic medications, a separate documented informed consent, that includes a description of the medications side effects, shall be obtained." See ICE NDS 2019, Standard, Medical Care, Section (II)(O).

¹⁷ "In addition to the criteria listed on the health assessment form, the evaluation shall inquire about and perform the following:

- a. Pregnancy test for detainees aged 18-56 and deliver to the detainee and document the results...
- f. History of breast and gynecological problems;
- g. Family history of breast and gynecological problems..."

See ICE NDS 2019, Standard, Medical Care, Section (U)(1)(a), (f-g).

¹⁸ "The facility orientation program shall notify and inform detainees about the facility's disability accommodations policy, including their right to request reasonable accommodations and how to make such a request, in a language and/or manner they can understand." See ICE NDS 2019, Standard, Disability Identification, Assessment, and Accommodation, Section (II)(I). **This is a Repeat Deficiency.**

Compliance Inspection Results Compared	FY 2020 (NDS 2019)	FY 2021 (NDS 2019)
Standards Reviewed	18	18
Deficient Standards	9	8
Overall Number of Deficiencies	17	12
Repeat Deficiencies	0	3
Areas of Concern	0	0
Corrective Actions	1	1