

PREA Audit: Subpart B DHS Holding & Staging Facilities Audit Report



Homeland Security

AUDIT DATES

From:	12/13/2022	To:	12/14/2022
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AUDITOR INFORMATION

Name of auditor:	Thomas Eisenschmidt	Organization:	Creative Corrections, LLC
Email address:	(b) (6), (b) (7)(C)	Telephone number:	409-866-(b) (6), (b) (7)(C)

PROGRAM MANAGER INFORMATION

Name of PM:	(b) (6), (b) (7)(C)	Organization:	Creative Corrections, LLC
Email address:	(b) (6), (b) (7)(C)	Telephone number:	409-866-(b) (6), (b) (7)(C)

AGENCY INFORMATION

Name of agency:	U.S. Immigration and Customs Enforcement (ICE)
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FIELD OFFICE INFORMATION

Name of Field Office:	New York City
Field Office Director:	Kenneth Genalo
ERO PREA Field Coordinator:	(b) (6), (b) (7)(C)
Field Office HQ physical address:	26 Federal Plaza, Suite 1005, New York, NY 10278
Mailing address: (if different from above)	Click or tap here to enter text.

INFORMATION ABOUT THE FACILITY BEING AUDITED

Basic Information About the Facility

Name of facility:	New York City Hold Room (NYCHR)
Physical address:	26 Federal Plaza 10th floor, New York, NY 10278
Mailing address: (if different from above)	Click or tap here to enter text.
Telephone number:	212-863-3401
Facility type:	ICE Holding Facility

Facility Leadership

Name of Officer in Charge:	(b) (6), (b) (7)(C)	Title:	Assistant Field Office Director (AFOD)
Email address:	(b) (6), (b) (7)(C)	Telephone number:	212-863-(b) (6), (b) (7)(C)
Name of PSA Compliance Manager:	(b) (6), (b) (7)(C)	Title:	Supervisory Detention and Deportation Officer (SDDO)
Email address:	(b) (6), (b) (7)(C)	Telephone number:	212-863-(b) (6), (b) (7)(C)

ICE HQ USE ONLY

Form Key:	29
Revision Date:	12/14/2021
Notes:	Click or tap here to enter text.

NARRATIVE OF AUDIT PROCESS AND DESCRIPTION OF FACILITY CHARACTERISTICS

Directions: Discuss the audit process to include the date of the audit, names of all individuals in attendance, audit methodology, description of the sampling of staff and detainees interviewed, description of the areas of the facility toured, and a summary of facility characteristics.

The U.S. Department of Homeland Security (DHS) Prison Rape Elimination Act (PREA) audit of the NYCHR was conducted on December 13-14, 2022, by U.S. Department of Justice (DOJ) and DHS certified PREA Auditor Thomas Eisenschmidt, employed by Creative Corrections, LLC. The Auditor was provided guidance and review during the audit report writing and review process by U.S. Immigration and Customs Enforcement (ICE) Program Manager (PM), (b) (6), (b) (7)(C) and Assistant Program Manager (APM) (b) (6), (b) (7)(C) both DOJ and DHS certified PREA Auditors. The PM's role is to provide oversight to the ICE PREA audit process and liaison with the ICE, Office of Professional Responsibility (OPR), External Reviews and Analysis Unit (ERAU) during the audit report review process. The purpose of the audit was to determine compliance with the DHS PREA Standards for the audit period of December 13, 2021, through December 12, 2022. This was the facility's first PREA audit. The NYCHR is an ICE Hold Room operated by ICE with security services provided by ISS Action Security (ISSA) under contract with the DHS/ICE, Office of Enforcement and Removal Operations (ERO). The NYCHR provides custody for ICE adult male and female detainees, while pending immigration review or deportation. The design capacity for this facility is 60 detainees; 4028 detainees were booked into the NYCHR in the last 12 months. The facility is located in New York City, New York.

On December 13, 2022, an entrance briefing was held in the NYCHR AFOD's office. The ICE ERAU Team Lead, (b) (6), (b) (7)(C), opened the briefing and then turned it over to the Auditor. In attendance were:

ICE Staff

(b) (6), (b) (7)(C), AFOD

(b) (6), (b) (7)(C) SDDO, Prevention of Sexual Assault (PSA) Compliance Manager

(b) (6), (b) (7)(C) Inspections and Compliance Specialist (ICS), OPR/ERAU - via conference line

Creative Corrections

Thomas Eisenschmidt, Certified PREA Auditor

The Auditor introduced himself and then provided an overview of the audit process and the methodology to be used to demonstrate PREA compliance with those present. The Auditor explained the audit process is designed to not only assess compliance through written policies and procedures but also to determine whether such policies and procedures are reflected in the knowledge of staff at all levels and in daily practice. Approximately three weeks prior to the audit, ERAU Team Lead, (b) (6), (b) (7)(C), provided the Auditor with the facility's Pre-Audit Questionnaire (PAQ), agency policies, allegations spreadsheet and other pertinent documents through ERAU's SharePoint site. The main policies that provide facility direction for PREA at the NYCHR are Policy 11087.1, Operations of ERO Holding Facilities, and Policy 11062.2, Sexual Abuse and Assault Prevention and Intervention (SAAPI). All documentation, policies, and the PAQ were reviewed by the Auditor prior to the site visit. A tentative daily schedule was provided by the Team Lead for the interviews with staff and detainees if available on site. The Auditor received no correspondence from any detainees or staff prior to the audit or prior to the submission of the report.

On the first day of the audit and for the entire site visit, there were no detainees at the NYCHR. The detainee in-processing/booking area is located on the 10th floor of a large government building. Detainees are escorted to the booking area by ICE Deportation Officers (DO). The area on the 10th floor where these detainees are processed contains: 4 multiple occupancy holding cells, a medical examination room, and an interview room. (b) (7)(E)

Detainees arriving at the NYCHR remain at the facility for approximately three hours and are then either released from custody or remanded to an ICE Detention Facility. Detainees remain in this area until they are individually classified and receive a risk assessment by the DO, and then as noted above, are either released or remanded. Those detainees that will be remanded to an ICE Detention Facility are supervised in these holding cells by the ISSA security staff. Although no detainees are generally held overnight, ISSA provides 24-hour security of the area, on two 12-hour shifts should ICE need to process detainees throughout the day and night. ISSA provides 61 security staff positions at the facility for transportation, care, and custody, and supervisory security staff to augment the operations of the facility. The NYCHR also has a medical unit operated by three ICE Health Service Corps (IHSC) staff. This unit is staffed Monday through Friday, from 6 a.m. to 8 p.m., but has on call coverage outside those hours. A total of five random ISSA staff interviews, from all shifts, were conducted during the audit. According to the PAQ, ICE ERO staff that have access to detainees at the NYCHR at the time of the audit was 10. During the onsite portion of the audit there were only two ICE staff DO, beyond the AFOD and SDDO/PSA Compliance Manager, present. The Auditor conducted specialized interviews with the AFOD, SDDO/PSA Compliance Manager, DO (2), ISSA Project Manager, Health Services Administrator (HSA), and the ISSA Human Resources (HR) Manager. Interviews were conducted in the interview room located within the facility intake area. No staff refused to be interviewed. All staff interviewed were aware of the agency's zero-tolerance policy, their responsibilities to protect detainees from sexual abuse, and their duties as first responders as part of a coordinated response. There are no other staff, contractors or volunteers having contact with detainees beyond the ERO and ISSA staff.

On December 14, 2022, an exit briefing was held in the AFOD's office. The ICE ERAU Team Lead, Kay Washington opened the briefing and then turned it over to the Auditor. In attendance were:

ICE Staff

(b) (6), (b) (7)(C), SDDO, PSA Compliance Manager

(b) (6), (b) (7)(C), ICS, OPR/ERAU - via conference line

Creative Corrections

Thomas Eisenschmidt, Certified PREA Auditor

The Auditor spoke briefly about the ICE staff and ISSA staff knowledge of the NYCHR zero-tolerance policy. The Auditor informed those present that he was impressed with the staff and overall operation of the NYCHR, but it was too early in the process to formalize an outcome of the audit and that he would need to review his findings and results of the interviews conducted prior to making a final determination on compliance for the standards. The Auditor thanked ERAU, ERO, IHSC and the ISSA staff for their cooperation during the site visit.

SUMMARY OF AUDIT FINDINGS

Directions: Discuss audit findings to include a summary statement of overall findings and the number of provisions which the facility has achieved compliance at each level: Exceeds Standard, Meets Standard, and Does Not Meet Standard.

Number of Standards Exceeded: 1

§115.131 Employee, contractor, and volunteer training

Number of Standards Met: 27

§115.111 Zero-tolerance of sexual abuse

§115.113 Detainee supervision and monitoring

§115.115 Limits to cross-gender viewing and searches

§115.116 Accommodating detainees with disabilities and detainees who are limited English proficient

§115.117 Hiring and promotion decisions

§115.121 Evidence and forensic medical examinations

§115.122 Policies to ensure investigation of allegations and appropriate agency oversight

§115.132 Notification to detainees of the agency's zero-tolerance policy

§115.134 Specialized training: Investigations

§115.141 Assessment for risk of victimization and abusiveness

§115.151 Detainee reporting

§115.154 Third-party reporting

§115.161 Staff reporting duties

§115.162 Protection duties

§115.163 Reporting to other confinement facilities

§115.164 Responder duties

§115.165 Coordinated response

§115.166 Protection of detainees from contact with alleged abusers

§115.167 Agency protection against retaliation

§115.171 Criminal and administrative investigations.

§115.172 Evidentiary standard for administrative investigations

§115.176 Disciplinary sanctions for staff

§115.177 Corrective action for contractors and volunteers

§115.178 Referrals for prosecution for detainee on detainee sexual abuse

§115.182 Access to emergency medical services

§115.187 Data collection

§115.201 Scope of audits

Number of Standards Not Applicable: 2

§115.114 Juveniles and family detainees

§115.118 Upgrades to facilities and technologies

Number of Standards Not Met: 0

Hold Room Risk Rating

§115.193 Audits of standards - Low Risk

PROVISIONS

Directions: In the notes, the auditor shall include the evidence relied upon in making the compliance or non-compliance determination for each provision of the standard, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Corrective Action Plan Final Determination, accompanied by information on specific corrective actions taken by the facility. Failure to comply with any part of a standard provision shall result in a finding of "Does not meet Standard" for that entire provision, unless that part is specifically designated as Not Applicable. For any provision identified as Not Applicable, provide an explanation for the reasoning.

§115.111 - Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) The Auditor determined compliance with this standard based on Policy 11062.2 that requires, ICE have a zero-tolerance policy for all forms of sexual abuse or assault. This policy further requires ICE provide effective safeguards against sexual abuse and assault of all individuals in ICE custody, including with respect to screening, staff training, detainee education, response and intervention, medical and mental health care, reporting, investigation, and monitoring and oversight, as outlined in this directive, in the requirements of Performance-Based National Detention Standards (PBNDS) 2011 Standard 2.11, and in other related detention standards and ICE policies. During the site visit the Auditor conducted informal and formal interviews with ERO staff and ISSA staff. These staff were aware of the agency's zero-tolerance policy. There were no detainees on site during the site visit. The interview with the AFOD, the PSA Compliance Manager, ERO staff, ISSA staff, and observation of the posted sexual safety information throughout the four hold rooms confirm that the zero-tolerance policy for sexual abuse has been implemented at the NYCHR facility.

§115.113 - Detainee supervision and monitoring.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) The Auditor determined compliance with these standard subparts based on Policy 11087.1 that requires the FOD ensure that each holding facility maintains sufficient supervision of detainees, including through appropriate staffing levels and, where applicable, video monitoring, to protect detainees against sexual abuse and assault. In so doing, the FOD shall take into consideration the physical layout of each holding facility; the composition of the detainee population; the prevalence of substantiated and unsubstantiated incidents of sexual abuse and assault; the findings and recommendations of sexual abuse and assault incident review reports; and any other relevant factors, including but not limited to, the length of time detainees spend in custody at the holding facility. This policy further requires the FOD ensure that detainees placed into holding facilities are accounted for and continuously monitored and that holding facilities are emptied upon the conclusion of daily operations in those field office locations operating on a daily schedule. Absent exceptional circumstances, no detainee should be housed in a holding facility for longer than 12 hours and monitored for any apparent indications of a mental or physical condition or signs of hostility that may require closer supervision or emergency medical care. (b) (7)(E)

The Auditor was provided the staffing levels and post orders for supervision positions for each of the 2 12-hour shifts at the NYCHR. The Auditor also was provided and reviewed the facility medical staffing rosters. The interviews with the AFOD and ISSA Program Manager confirmed that the number of ISSA security positions was established by ICE taking into consideration the subpart (c) requirements. (b) (7)(E)

The ISSA Project Manager provided the Auditor with the 2021 completed annual detainee supervision guideline review.

§115.114 - Juvenile and family detainees.

Outcome: Not Applicable (provide explanation in notes)

Notes:

NYCHR does not accept juveniles or family detainees. This was confirmed in the PAQ and in interviews conducted with the AFOD and the PSA Compliance Manager. The standard, therefore, is not applicable.

§115.115 - Limits to cross-gender viewing and searches.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(b)(c)(d)(e)(f) The Auditor determined compliance with these standard subparts based on Policy 11087.1, that requires the FOD ensure that all pat-down searches are conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and ICE policy, including consideration of officer safety. Where operationally feasible, an officer of the same gender as the detainee will perform the pat down search. Every detainee shall undergo a pat down search for weapons and contraband before being placed in a hold room. A pat down search shall be performed even if another agency or other ERO personnel report completing one prior to the detainee's arrival at the ERO facility or transfer of custody. This policy further requires the FOD ensure when the pat down search indicates the need for a more thorough search, an extended search (i.e., strip search) is conducted in accordance with ICE policies and procedures, including that all strip searches and visual body cavity searches are documented; cross-gender strip searches or cross-gender visual body cavity searches are not conducted except in exigent circumstances, including consideration of officer safety, or when performed by medical practitioners; and visual body cavity searches of minors are conducted by a medical practitioner and not by law enforcement personnel. Policy 11087.1 also requires the FOD ensure

that detainees are permitted to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine hold room checks, or is otherwise appropriate in connection with a medical exam or monitored bowel movement under medical supervision. The FOD will also ensure that ERO personnel of the opposite gender announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing. The FOD shall also ensure that ERO personnel do not search or physically examine a detainee for the sole purpose of determining the detainee's gender. If the detainee's gender is unknown, it may be determined during conversations with the detainee, by reviewing medical records (if available), or, if necessary, learning that information as part of a broader medical examination conducted in private, by a medical practitioner. During interviews with the ISSA security staff, the search training was discussed. Each staff member detailed their search training and the respectful and professional procedures to be followed whenever conducting searches. All indicated that they are never allowed to strip search or perform a body cavity search on a detainee. They also indicated their training included the requirement that all cross-gender pat searches only be conducted after reasonable diligence to find a staff of the same gender for a male detainee, and under exigent circumstances for a female detainee. These interviews further indicated that these searches are allowed under those circumstances, but they are rarely conducted and would be documented, including documenting the circumstances and conditions requiring the search. They also indicated that there is always a male and female security staff member assigned to each shift. They confirmed that if they were to enter into one of the holding rooms in which there were cross-gender detainees present, they would announce themselves prior to entering. (b) (7)(E)

The camera view is also pixelated in order to provide privacy to the occupant. The Project Manager and SDDO confirmed that all ISSA staff and ICE staff are trained within the search guidelines of ICE and policy. The Auditor reviewed the ICE search training curriculum from the SharePoint, utilized by both ICE and ISSA, and found the training met the standard requirements. The Auditor was also provided copies of search training records for ICE staff and ISSA staff.

§115.116 - Accommodating detainees with disabilities and detainees who are limited English proficient.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) The Auditor determined compliance with these standard subparts based on policy 11087.1 that requires, the FOD take appropriate steps to ensure that detainees with disabilities have an equal opportunity to participate in and benefit from processes and procedures in connection with placement in an ERO holding facility, consistent with established statutory, regulatory, DHS and ICE policy requirements. Each FOD is required by this policy to take reasonable steps to ensure meaningful access to detainees who are limited English proficient (LEP), consistent with established regulatory and DHS and ICE policy requirements. As noted earlier, there were no detainees available during the site visit to observe the intake process. The Auditor had the opportunity to interview one of the DOs who performs the intake for detainees. He informed the Auditor that most detainees the NYCHR encounter are LEP. Detainees, upon arrival, are placed in one of the four hold rooms, based on gender, prior to being interviewed by an ICE DO. In each of the hold rooms affixed to the walls is the ICE Sexual Abuse Awareness Information (SAA) pamphlet in both English and Spanish. If the DO performing the intake is not fluent in the language spoken and understood by the detainee being processed, they would utilize the DHS "I speak..." Language Identification Guide to have the detainee point out which language they speak. The NYCHR provides the detainee the SAA pamphlet available in 15 languages (Arabic, Bengali, Chinese, English, French, Haitian Creole, Hindi, Portuguese, Punjabi, Romanian, Russian, Spanish, Turkish, Ukrainian, and Vietnamese) and a copy of the ICE National Handbook available in 14 of the most prevalent languages encountered by ICE (English, Spanish, French, Haitian Creole, Punjabi, Hindi, Arabic, Simplified Chinese, Russian, Turkish, Bengali, Romanian, Portuguese, and Vietnamese). He also confirmed if the detainee speaks a language not covered by either document, he utilizes the ERO Language Services provider to access an interpreter to provide sexual safety and reporting information found in the SAA pamphlet. This contracted service provides interpretive and translation services, including sign language, for NYCHR staff to use when communicating with detainees. According to the PSA Compliance Manager if the facility needed to utilize sign language for a detainee, they would contact the contracted services to set up the service. Although the PREA information documents located in each hold room are in Spanish and English only, the staff member performing the intake asks the detainee questions about their safety and PREA concerns while on the phone with the language services. This intake DO also detailed to the Auditor the handling of any detainee arriving at the NYCHR with a disability. He indicated those who may have limited sight or who may be blind would have the information presented to them verbally by the intake staff person. A detainee arriving with limited hearing or who is deaf would be provided information in writing or by use of the facility TTY equipment. A detainee arriving with intellectual, or psychiatric disabilities would be referred to either medical or mental health, if the intake staff member was unable to effectively communicate with the detainee. This DO also informed the Auditor that the use of other detainees as interpreters is covered in policy 11062.2. The policy allows use when the detainee requests a preference for another detainee and when ICE determines it appropriate and consistent with DHS policy. He also confirmed that the use of minors, those witnessing the alleged assault or those detainees with a relationship with the alleged abuser is not appropriate. The Auditor questioned the ISSA security staff about providing detainees with sexual safety information who may be hearing impaired or deaf. They indicated that this information is provided to them through DHS zero tolerance poster, the SAA pamphlet and ICE National Handbook, including how to report allegations. If the ISSA staff is confronted with a detainee who is blind or has limited sight, the detainee would be provided individualized service by a staff member who would ensure the information is provided in a manner of their understanding, consistent with the answers provided by the intake DO. The ISSA staff also informed the Auditor that if they encounter any detainee with intellectual deficiencies, the staff will try to communicate with them to the best of their abilities. If there was any difficulty, then the detainee would be referred to Medical or Mental Health staff to assist them. LEP detainees, where a staff member was not available to interpret, would be provided interpretive service through the contracted Language Line.

§115.117 - Hiring and promotion decisions.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

(a)(b)(c)(d)(e)(f) The Auditor determined compliance with these standard subparts based on Federal Statute 731.202 (b), Executive Order 10450, ICE Personnel Security and Suitability Program Directive 6-7.0, and ICE Suitability Screening Requirements for Contractor Personnel Directive 6-8.0, which collectively require anyone entering into or remaining in government service undergo a thorough background examination for suitability and reinvestigations every 5 years. The background investigation, depending on the type of work, is thorough to include education checks, criminal records check, neighbor, and residence checks, financial checks, and prior employment checks. The policy documents outline misconduct and criminal misconduct being grounds for unsuitability, including material omissions or making false or misleading statements in the application. The Unit Chief of OPR Personnel Security Operations (PSO) informed Auditors who attended virtual training in November 2021 that detailed candidate suitability for all applicants includes their obligation to disclose any misconduct where he/she engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); any conviction of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or any instance where he or she has been civilly or administratively adjudicated to have engaged in such activity. Based on information provided in an email by the OPR PSO (A) Division Chief, information on substantiated allegations of sexual abuse involving a former employee would be provided to prospective employers upon request, unless prohibited by law. The Auditor interviewed the ISSA Project Manager and HR Manager about their hiring practices at the NYCHR. Each confirmed that no one would be hired or promoted who has engaged in sexual abuse in a prison, jail, holding facility or any other institution. They also stated that all perspective applicants are specifically questioned about this type of misconduct, during the hiring process, and during promotions and that any positive response disqualifies the applicant from employment or promotion. The HR Manager also indicated there were no promotions during the audit period. They also confirmed that any material omissions or providing false information would disqualify the candidate as well. The ISSA staff do not have an annual evaluation requiring their involvement by signature; however, the HR Manager confirmed that all NYCHR staff have an affirmative duty to report any misconduct described in subpart (a). She also stated that her staff is required, during promotions, to acknowledge by signature that they have not been involved in any such misconduct. There were no ISSA staff promotions within the audit period. There was one ICE promotion during the audit period which was the SDDO who confirmed during his interview with the Auditor that he was asked the misconduct questions covered in provision (a) and signed the required form during the promotion process. Based on the memorandum dated November 8, 2021, issued by the ICE Acting Deputy Director, Employee Obligation to Report Corruption and Misconduct, ICE employees are obligated to report criminal and other allegations of employee and contractor misconduct, specifically including sexual assaults, sexual harassment, or non-sexual harassment of detainees. Interviews with ICE staff and ISSA staff confirmed their awareness of the agency's requirement to disclose any misconduct outlined in subpart (a) of this standard. The HR Manager also stated ICE completes all background investigations checks for all ISSA staff prior to hiring and then every five years after the initial. Review of documentation provided by ICE's PSO Unit Chief confirmed that 10 randomly selected employee (5-ISSA and 5-ICE) background investigations were performed prior to them reporting to work. Documentation also confirmed the due dates for the updated five-year background checks were in compliance with the standard requirements.

§115.118 - Upgrades to facilities and technologies.**Outcome:** Not Applicable (provide explanation in notes)**Notes:**

This standard is not applicable as the AFOD and PAQ confirmed that NYCHR did not expand the facility or add additional video equipment during the audit period.

§115.121 - Evidence protocols and forensic medical examinations.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

(a)(b)(c)(d)(e) The Auditor determined compliance with these standard subparts based on policies 11087.1 and 11062.2, that requires the NYCHR AFOD ensure that the facility complies with the investigation mandates established by PBNDS 2011 Standard 2.11, as well as other relevant detention standards and contractual requirements, including by, when feasible, securing and preserving the crime scene and safeguarding information and evidence consistent with established evidence protocols; conducting a prompt, thorough, and objective investigation by qualified investigators; arranging for the victim to undergo a forensic medical examination, where appropriate; and ensuring that the presence of the victim's outside or internal victim advocate, as requested by the victim, is allowed for support during forensic exams and investigatory interviews. Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the FOD shall arrange for or refer an alleged victim detainee to a medical facility to undergo a forensic medical examination by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified health care personnel. If, in connection with an allegation of sexual abuse or assault, the detainee is transported for a forensic examination to an outside hospital that offers victim advocacy services, the detainee shall be permitted to use such services to the extent available, consistent with security needs. If the sexual abuse or assault occurred within a time period that still allows for the collection of physical evidence, the facility requests the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and if the sexual abuse or assault occurred within a time period that still allows for the collection of physical evidence, the facility ensures that the alleged abuser does not take any

actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. As noted earlier, the NYCHR is a 12-hour hold facility and the typical stay is about 3 hours, after which the detainee is either released from custody or remanded to a detention facility. The AFOD and PSA Compliance Manager stated that when an allegation of sexual assault is made at the NYCHR, a criminal referral is made to the Federal Protective Services (FPS) law enforcement with a significant incident report completed by the ICE staff and submitted to the FOD, OPR, and DHS Office of Inspector General (OIG). The detainee is brought to the medical area and prepared for transport by the IHSC to the Mount Sinai Beth Israel Hospital (MSBIH) where a forensic examination is performed by a SANE, SAFE, or other qualified health care personnel, and victim advocacy services will be provided. The Commander (HSA) with IHSC and the AFOD indicated the detainee would be subsequently moved to an ICE detention facility where the detainee would be afforded victim advocate services and follow-up services with medical and crisis intervention services, if detained after returning from the offsite local hospital. These interviews further explained that if OPR elects not to investigate the allegation and refers it back to the facility, an administrative investigation would be done by the NYCHR as the allegation originated at that facility. This investigation would be conducted by a specially trained SDDO. If the detainee is released from ICE custody OPR would continue their investigation. At the conclusion of their collection of facts, they would determine if the allegation is substantiated, unsubstantiated or unfounded based upon a preponderance of the evidence. The Auditor verified the training for the NYCHR fact finder. NYCHR provided the Auditor with evidence that they requested in writing that the FPS follow the requirements of paragraphs (a) through (d) of this standard section.

§115.122 - Policies to ensure investigation of allegations and appropriate agency oversight.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c)(d) The Auditor determined compliance with these standard subparts based on Policy 11062.2, that requires NYCHR ensure that the appropriate law enforcement agency having jurisdiction for the investigation be notified by the facility administrator of the alleged sexual abuse or assault. The FOD shall notify the appropriate law enforcement agency directly, if necessary, and notify ERO's Assistant Director for Field Operations telephonically within two hours of the alleged sexual abuse or assault or as soon as practical, according to procedures outlined in the June 8, 2006, Memorandum from (b) (6), (b) (7)(C) Acting Director, Office of Detention and Removal Operations, regarding "Protocol on Reporting and Tracking of Assaults" (Torres Memorandum). Notify the ICE Joint Intake Center (JIC) telephonically within two hours of the alleged sexual abuse or assault, and in writing within 24 hours via the ICE [Significant Event Notification] SEN Notification Database, according to procedures outlined in the Torres Memorandum. The JIC shall notify the DHS Office of Inspector General (OIG). All sexual abuse and assault data collected pursuant to 11062.2 shall be maintained for at least 10 years after the date of initial collection, unless Federal, State, or local law requires otherwise. As noted in standard 115.121, the AFOD and SDDO detailed the notification process for any sexual abuse allegation with the initial call to the FPS with a SEN report completed by the facility ERO staff to the DHS OIG, JIC, Assistant Director for Field Operations, and PSA Coordinator all within the time frames required by the 11062.2 policy. A review of the ICE website (<http://www.ice.gov/PREA>) confirms the investigation protocols are available to the public. There were no sexual abuse allegations during the audit period.

(e) The Auditor determined compliance with this standard subpart based on Policy 11062.2 requiring OPR to coordinate with appropriate ICE entities and federal, state, or local law enforcement to facilitate necessary immigration processes that ensure availability of victims, witnesses, and alleged abusers for investigative interviews and administrative or criminal procedures, and provide federal, state, or local law enforcement with information about U nonimmigrant visa certification. On July 1, 2022, the ICE PREA PM interviewed the Acting Section Chief of the OPR Directorate Oversight, and he confirmed that OPR Special Agents would provide the detainee victim of sexual abuse, that is criminal in nature, with timely access to U nonimmigrant status information. The OPR Acting Section Chief further stated that if an OPR investigation determined that a detainee was a victim of sexual abuse while in ICE custody, the assigned Special Agent would provide an affidavit documenting such in support of the detainees U nonimmigration visa application.

§115.131 – Employee, contractor, and volunteer training.

Outcome: Exceeds Standard (substantially exceeds requirement of standard)

Notes:

(a)(b) The Auditor determined compliance to these standard subparts based on Policy 11062.2, that requires, ICE personnel who may have contact with individuals in ICE custody, including all ERO officers and HSI special agents, shall receive training on, among other items ICE's zero-tolerance policy for all forms of sexual abuse and assault; The right of detainees and staff to be free from sexual abuse or assault; Definitions and examples of prohibited and illegal behavior; Dynamics of sexual abuse and assault in confinement; Prohibitions on retaliation against individuals who report sexual abuse or assault; Recognition of physical, behavioral, and emotional signs of sexual abuse or assault, situations in which sexual abuse or assault may occur, and ways of preventing and responding to such occurrences, including Common reactions of sexual abuse and assault victims; How to detect and respond to signs of threatened and actual sexual abuse or assault; Prevention, recognition, and appropriate response to allegations or suspicions of sexual abuse and assault involving detainees with mental or physical disabilities; How to communicate effectively and professionally with victims and individuals reporting sexual abuse or assault; How to avoid inappropriate relationships with detainees; Accommodating LEP individuals and individuals with mental or physical disabilities; Communicating effectively and professionally with lesbian, gay, bisexual, transgender, intersex, or gender nonconforming individuals, and members of other vulnerable populations; Procedures for fulfilling notification and reporting requirements under this Directive; The investigation process; and the requirement to

limit reporting of sexual abuse or assault to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes. According to the PSA Compliance Manager, HSA, and the Project Manager, all staff received PREA training during their initial employment training and annually and provide documentation of that fact. At the time of the audit, training and associated training records were being switched from DHS PALMS (Performance and Learning Management System) to a new program. The SDDO stated that the NYCHR was provided Agency SAAP/IA/PREA training, as found on the ERAU SharePoint, which is being utilized for initial and refresher training for ICE staff, ISSA staff and IHSC staff until the new program is operational. During the interviews with the ICE DOs, the HSA, and the ISSA staff, all confirmed the subject matter of the training and required by the standard; additionally, the Auditor reviewed the ICE PREA Employee Training provided on ERAU SharePoint and confirmed that all required topics are included. The NYCHR does not employ other contractors or have volunteers at the NYCHR.

(c) This standard subpart required the facility document and maintain for 5 years completed training for employees, contractors, and volunteers. The Auditor reviewed training attendance sign in sheets for both ICE and ISSA staff. The Auditor confirmed during the interview with the AFOD and SDDO that training records, noted in the (a)(b) discussion above, are maintained by the Agency for at least 5 years. The ISSA staff, complete their PREA training, both initial and annual, through their company utilizing the ICE PREA Employee Training curriculum. The Auditor spoke with the Project Manager who confirmed employee records, to include training, are maintained for at least 5 years.

§115.132 – Notification to detainees of the agency's zero-tolerance policy.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The Auditor determined compliance with the standard based on Policy 11087.1, that requires the NYCHR FOD ensure that key information regarding ICE's zero-tolerance policy for sexual abuse and assault is visible or continuously and readily available to detainees through posters, detainee handbooks, or other written formats. As noted in standard 115.116, there were no detainees on site during the visit. The Auditor, however, had the opportunity to interview one of the DOs who performs the intake for detainees. He informed the Auditor that most detainees the NYCHR encounters are LEP. Detainees, upon arrival, are placed in one of the four hold rooms, based on gender, prior to being interviewed by an ICE DO. In each of the hold rooms affixed to the walls is the SAA informational pamphlet in both English and Spanish. If the DO performing the intake is not fluent in the language spoken and understood by the detainee being processed, they would utilize the DHS "I speak..." Language Identification Guide to have the detainee point out which language they speak. The NYCHR provides the detainee the SAA informational pamphlet available in 15 languages (Arabic, Bengali, Chinese, English, French, Haitian Creole, Hindi, Portuguese, Punjabi, Romanian, Russian, Spanish, Turkish, Ukrainian, and Vietnamese) and a copy of the ICE National Handbook available in 14 of the most prevalent languages encountered by ICE (English, Spanish, French, Haitian Creole, Punjabi, Hindi, Arabic, Simplified Chinese, Russian, Turkish, Bengali, Romanian, Portuguese, and Vietnamese). He also confirmed if the detainee speaks a language not covered by either document, he utilizes the ERO Language Services provider to access an interpreter to provide sexual safety and reporting information found in the SAA pamphlet. This service provides interpretive and translation services, including sign language, for NYCHR staff to use when communicating with detainees. Although the PREA information documents located in each hold room are in Spanish and English only, the staff member performing the intake asks the detainee questions about their safety and PREA concerns while on the phone with the language services. This intake DO also detailed to the Auditor the handling of any detainee arriving at the NYCHR with a disability. He indicated those who may have limited sight or may be blind would have the information presented to them verbally by the intake staff person. A detainee arriving with limited hearing or deaf would be provided information in writing or by use of the TTY equipment. A detainee arriving with intellectual, or psychiatric disabilities would be referred to either medical or mental health, if the intake staff member was unable to effectively communicate with him/her. This DO also informed the Auditor that the use of other detainees as interpreters is covered in policy 11062.2; the policy allows use when the detainee requests a preference for another detainee and when ICE determines it appropriate and consistent with DHS policy. The Auditor questioned the ISSA security staff about providing detainees with sexual safety information who may be hearing impaired or deaf. They indicated that this information is provided to them during intake by the DO. Information is also available to them through the DHS zero tolerance poster, the SAA pamphlet and ICE National Detainee Handbook, including how to report sexual abuse allegations. If the ISSA staff is confronted with a detainee who is blind or has limited sight, the detainee would be provided individualized service by a staff member who would ensure the information is provided in a manner of their understanding, consistent with the answers provided by the intake DO. The ISSA staff also informed the Auditor that if they encounter any detainee with intellectual deficiencies, the staff will try to communicate with them to the best of their abilities. If there was any difficulty, then the detainee would be referred to Medical or Mental Health staff to assist them.

§115.134 – Specialized training: Investigations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) The Auditor determined compliance with these standard subparts based on Policy 11062.2 that requires OPR provide specialized training to OPR investigators who conduct investigations into allegations of sexual abuse and assault, as well as Office of Detention Oversight staff, and other OPR staff, as appropriate. The training should cover, at a minimum, interviewing sexual abuse and assault victims, sexual abuse and assault evidence collection in confinement settings, the criteria and evidence required for administrative action or prosecutorial referral, and information about effective cross-agency coordination in the investigation process. The lesson plan for this specialized training is the ICE OPR Investigations Incidents of Sexual Abuse and Assault, which covers in depth

investigative techniques, evidence collections, and covers all aspects to conducting an investigation of sexual abuse in a confinement setting. The agency offers another level of training, the PREA Fact Finders Training, which provides information needed to conduct the initial investigation at the facility to determine if an incident has taken place or to complete the administrative investigation. This training includes topics related to interacting with traumatized victims; best practices for interacting with LEP detainees; best practices for interacting with Lesbian, Gay, Bi-sexual, Transgender, Intersex (LGBTI), and disabled detainees; and an overall view of the investigative process. The Auditor verified the NYCHR Investigator's training on the OPR's SharePoint site. There were no allegations of sexual abuse at the NYCHR for the audit period.

§115.141 - Assessment for risk of victimization and abusiveness.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c)(d)(e) The Auditor determined compliance with these standard subparts based on Policy 11087.1 that requires the NYCHR FOD ensure that before placing detainees together in a hold room, there shall be consideration of whether a detainee may be at a high risk of being sexually abused or assaulted, and, when appropriate, shall take necessary steps to mitigate any such danger to the detainee. The FOD shall ensure that detainees who may be held overnight with other detainees are assessed to determine their risk of being either sexually abused or assaulted or sexually abusive, to include being asked about their concerns for their physical safety. The FOD shall ensure that the following criteria are considered in assessing detainees for risk of sexual victimization, to the extent that the information is available: Whether the detainee has a mental, physical, or developmental disability; The age of the detainee; The physical build and appearance of the detainee; Whether the detainee has previously been incarcerated or detained; The nature of the detainee's criminal history; Whether the detainee has any convictions for sex offenses; Whether the detainee has self-identified as Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI) or gender nonconforming; Whether the detainee has self-identified as previously experiencing sexual victimization; and the detainee's own concerns about his or her physical safety. This policy further requires the FOD implement appropriate controls on the dissemination of any sensitive information regarding a detainee provided pursuant to screening procedures. For detainees identified as being at high risk for victimization, the FOD shall provide heightened protection, including continuous direct sight and sound supervision, single-housing, or placement in a hold room actively monitored on video by a staff member sufficiently proximate to intervene, unless no such option is feasible. As noted earlier, detainees are held for a short period of time at NYCHR. The typical amount of time is three hours or less and typically never overnight. The Auditor interviewed one ICE DO who performs the intake screening utilizing the Risk Classification Assessment (RCA) form on every detainee arriving at the NYCHR. The assessment is a computerized program that addresses specific vulnerabilities including whether the detainee has any concerns for their safety, concerns based on their sexual orientation, any instances of prior persecution or torture, a victim of sexual abuse or a violent crime. If the DO believes, after completing the RCA and reviewing information he/she has available and interviewing the detainee about their own safety concerns, that the individual may be at high risk of being victimized or has an abuse history, they are placed on direct supervision by the ISSA staff, alone in a separate hold room. (b) (7)(E)

The interviews with the intake DOs confirmed that during the intake process, a DO and SDDO are present during processing and the shift SDDO must review each RCA document. This process was also confirmed by the PSA Compliance Manager who is also an SDDO. Interviews conducted with the ICE ERO staff and the ISSA security staff confirmed information obtained during the intake process is not shared with anyone except on a need-to-know basis. Paper copies of the RCA form are kept secured under lock and key and the computer files are password protected and assessable by only those individuals with a need for this information.

§115.151 - Detainee reporting.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) The Auditor determined compliance with these standard subparts based on Policy 11087.1, that requires the FOD ensure that detainees are provided instructions on how they can privately report incidents of sexual abuse or assault, retaliation for reporting sexual abuse or assault, or staff neglect or violations of responsibilities that may have contributed to such incidents to ERO personnel. The FOD shall implement procedures for personnel to accept reports made verbally, in writing, anonymously, and from third parties and promptly document any verbal reports. The FOD is also required to ensure that detainees are provided with instructions on how they can contact the DHS Office of the Inspector General (OIG) or, as appropriate, another public or private entity which is able to receive and immediately forward detainee reports of sexual abuse or assault to agency officials to confidentially and, if desired, anonymously, report these incidents. As noted in 115.116, the Auditor interviewed an intake DO, who confirmed during the detainee intake process that the detainees are informed of the sexual abuse reporting information in their native language, through use of an interpreter when the detainee is LEP. During the onsite tour of the intake area, where detainees are held, the Auditor observed telephones and postings in English and Spanish providing telephone numbers for the DHS OIG, Detention Reporting and Information Line (DRIL), and consulate offices. The Auditor tested the DHS OIG telephone line on two of the three telephones maintained for detainees in the hold room area without the use of a PIN and found them operational. The interviews with the five ISSA staff and two DO staff confirmed that each would accept any allegation of sexual assault no matter how it was received and that all verbal allegations would be put in writing. There were no allegations reported during the audit period.

§115.154 - Third-party reporting.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The Auditor determined compliance with this standard based on Policy 11087.1, that requires the FOD implement procedures for personnel to accept reports made verbally, in writing, anonymously, and from third parties and promptly document any verbal reports. The Auditor observed third party reporting information to the DRIL and to the DHS OIG posted in each of the hold rooms in Spanish and English during the site visit tour. The interviews conducted with the five ISSA security staff and two ICE staff confirmed this policy requirement to accept all third-party reports of sexual abuse and document those received verbally in writing. The Agency website, <http://www.ice.gov/PREA>, has information on reporting allegations of sexual abuse and/or assault available for making third party reports by the public. As noted earlier in the report, there were no detainees available to interview during the site visit and no allegations during the audit period.

§115.161 - Staff reporting duties.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) The Auditor determined compliance with these standard subparts based on Policy 11062.2, that requires all ICE employees immediately report to a supervisor or a designated official any knowledge, suspicion, or information regarding an incident of sexual abuse or assault of an individual in ICE custody, retaliation against detainees or staff who reported or participated in an investigation, about such an incident, and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. This policy also requires apart from such reporting, that ICE employees are not to reveal any information related to a sexual abuse or assault allegation to anyone other than to the extent necessary to help protect the safety of the victim or prevent further victimization of other detainees or staff, or to make medical treatment, investigation, law enforcement, or other security and management decisions. The specialized staff and ISSA staff confirmed their responsibility to immediately report all incidents of sexual assault, sexual abuse, retaliation and staff neglect in duties that may have contributed to any sexual abuse or sexual assault. These NYCHR staff also confirmed their responsibility to immediately report all allegations of sexual abuse to their supervisors and document the known facts to them in writing as soon as possible but prior to the end of their shift. The Auditor was also informed of their obligation not to disclose any information that they become aware of except on a need-to-know basis. The ERO staff and ISSA staff were also aware of their ability to report outside their chain of command, as provided in training to both ICE staff and ISSA staff, any allegation if necessary. There were no allegations reported at the facility during the audit period.

(d) The Auditor determined compliance with this standard subpart based on Policy 11062.2, that requires if the alleged victim is under the age of 18 or determined, after consultation with the relevant Office of the Principal Legal Advisor (OPLA) Office of the Chief Counsel (OCC), to be a vulnerable adult under a State or local vulnerable persons statute, report the allegation to the designated State or local services agency as necessary under applicable mandatory reporting laws and document his or her efforts taken under this section. As noted earlier there are no juveniles processed at the NYCHR. The interview with the AFOD confirmed his reporting obligations under this subpart. He indicated if a vulnerable adult was ever the victim of sexual abuse, he would be responsible to contact the relevant ICE OPLA OCC and report the allegation. He also indicated he would be required to report the allegations to the designated State or local services agency as required by mandatory reporting laws and policy. The NYCHR had no incidents involving a vulnerable adult during the audit period. There were no allegations reported at the facility during the audit period.

§115.162 – Agency protection duties.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The Auditor determined compliance with this standard based on Policy 11062.2 that requires an NYCHR employee to take immediate action to protect the detainee if they have a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse or assault. Each of the formal interviews, conducted with the ICE staff and the ISSA staff at NYCHR, confirmed that in any instance where the staff member believed that a detainee is subject to substantial risk of sexual abuse their first response would be to locate and secure the detainee in a safe location and notify their supervisor.

§115.163 - Reporting to other confinement facilities.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) The Auditor determined compliance with these standard subparts based on Policy 11062.2, that requires if the alleged assault occurred at a different facility from the one where it was reported, staff at NYCHR is required to notify the facility administrator at the facility where the assault is alleged to have occurred. This policy requires the notification be made as soon as possible, but no later than 72 hours after receiving the allegation and document the notification. The interviews conducted with the AFOD, and the PSA Compliance Manager confirmed that if the NYCHR staff became aware of any incident of sexual assault while the detainee was confined at another facility, they would immediately notify that facility, by phone and email, as well as make ICE notifications as required by the 11062.2 policy. The Auditor was informed that the NYCHR has received no reports of this type during the audit period but if they did, he would report it within 72 hours and document the notifications.

(d) The Auditor determined compliance with this standard subpart based on interviews with the AFOD who stated that if the

NYCHR was to receive a sexual assault allegation report from another facility that took place at the NYCHR, the incident would be referred for investigation following the same protocols outlined for in 115.122. The NYDO received no reports from another facility of an allegation occurring at this facility during the audit period.

§115.164 - Responder duties.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) The Auditor determined compliance with these standard subparts based on Policy 11087.1, that requires the NYCHR FOD ensure that upon learning of an allegation that a detainee was sexually abused or assaulted, the responder, or his or her supervisor separates the alleged victim and abuser; preserves and protects, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence; if the sexual abuse or assault occurred within a time period that still allows for the collection of physical evidence, requests the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and if the sexual abuse or assault occurred within a time period that still allows for the collection of physical evidence, ensures that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. The interviewed ICE staff and ISSA staff detailed for the Auditor how each would respond to any allegation of sexual assault or sexual abuse. Their responses coincided with the subpart (a) requirements. Their knowledge of the policy was evident and it was also apparent staff was well trained and informed on ensuring the safety and well-being of detainee victims of sexual assault. Both groups explained that responder information is provided in their annual PREA training.

(b) The Auditor determined compliance with this standard subpart based on the interview with the HSA who confirmed she and her staff are trained to ensure, in allegations of sexual abuse, that evidence is not destroyed, and the medical staff is also required to report all allegations immediately to security staff.

§115.165 - Coordinated response.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) The Auditor reviewed Policy 11087.1, which states the FOD ensure a coordinated, multidisciplinary team approach to respond to allegations of sexual abuse and assault occurring in holding facilities, or in the course of transit to or from holding facilities, as well as to allegations made by a detainee at a holding facility of sexual abuse or assault that occurred elsewhere in ICE custody. If a victim is transferred between detention facilities or holding facilities, or to any non-ICE facility, ensure that, as permitted by law, the receiving facility is informed of the incident and the victim's potential need for medical or mental health care or victim services. The Auditor reviewed an ERO Assistant Director's broadcast notifying ERO Field Offices that when sexual abuse victims are transferred to a facility not covered by DHS PREA Standards Subpart A or B from a DHS holding facility, the agency shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise. The AFOD informed the Auditor that his response to any allegation of sexual abuse would be reporting it following the SEN procedures to include notifications to the OIG JIC, Assistant Director for Field Operations, PSA Coordinator, and the FPS about a possible criminal investigation. The HSA and the AFOD confirmed any transfer of a detainee sexual assault victim would be in compliance with policy and the ERO Assistant Director's broadcast. The facility had no allegations of sexual abuse during the audit period.

§115.166 - Protection of detainees from contact with alleged abusers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The Auditor determined compliance with the standard based on Policy 11062.2, that requires an ICE employee, contractor, or volunteer suspected of perpetrating sexual abuse or assault be removed from all duties requiring detainee contact pending the outcome of an investigation. The Auditor's interviews with the NYCHR AFOD and the ISSA Project Manager confirmed that any staff member alleged to have committed sexual abuse would be removed from all detainee contact until the conclusion of the investigation. As previously noted, there are no volunteers or contractors allowed detainee access at the NYCHR. The NYDO had no allegations of sexual abuse during the audit period.

§115.167 - Agency protection against retaliation.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The Auditor determined compliance with the standard based on Policy 11062.2, that requires employees not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse or assault, or for participating in sexual activity as a result of force, coercion, threats, or fear of force. The Auditor interviewed the AFOD and PSA Compliance Manager and both confirmed that retaliation by staff or detainee is not permitted at the NYCHR. The five ISSA staff and two DO staff interviews confirmed the prohibition of retaliation against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in sexual activity as a result of force, coercion, threats, or fear of force. There were no allegations of sexual abuse reported during the audit period.

§115.171 - Criminal and administrative investigations.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

(a)(b)(c) The Auditor determined compliance with these standard subparts based on Policy 11062.2, and the PBNDS 2.11 that requires the FOD to conduct a prompt, thorough, and objective investigation by qualified investigators. The FOD is also required to ensure that the facility complies with the investigation mandates established by the PBNDS 2.11, as well as other relevant detention standards. Upon conclusion of a criminal investigation where the allegation was substantiated, or in instances where no criminal investigation has been completed, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the facility shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. Substantiated allegation means an allegation that was investigated and determined to have occurred. Unsubstantiated allegation means an allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred. Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS, and the assigned criminal investigative entity. The ICE OPR will typically be the appropriate investigative office within DHS, as well as the DHS OIG in cases where the DHS OIG is investigating. The facility shall develop written procedures for administrative investigations, including provisions requiring; preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data, interviewing alleged victims, suspected perpetrators, and witnesses, reviewing prior complaints and reports of sexual abuse involving the suspected perpetrator, assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual's status as detainee, staff, or employee, and without requiring any detainee who alleges sexual abuse to submit to a polygraph, an effort to determine whether actions or failures to act at the facility contributed to the abuse, documentation of each investigation by written report, which shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings, and retention of such reports for as long as the alleged abuser is detained or employed by the agency or facility, plus five years. The policy also requires that the OPR coordinate with the FOD or SAC and facility staff to ensure evidence is appropriately secured and preserved pending an investigation by federal, state, or local law enforcement, DHS, OIG, and/or OPR. The AFOD gave the Auditor a list of facility Fact Finders and the Auditor randomly chose three names and verified their training. The Auditor questioned the AFOD about the investigative process at NYCHR. He stated that upon the facility receiving any allegation of sexual abuse the detainee is immediately brought to the medical area, notification is made to the FPS, FOD, OPR, and DHS OIG of the significant incident at the facility. Based on the seriousness of the allegation the detainee would be brought to the MSBIH for any forensic examination. As noted earlier in the report detainees remain at NYCHR in ICE custody for about three hours and are either released or transferred to an ICE detention facility. He further confirmed that ICE OPR would have first refusal for conducting the investigation. If OPR elects not to investigate the allegation and refers it back to the facility, an administrative investigation would be completed by the NYCHR and conducted by any of the specially trained SDDOs. At the conclusion of their collection of facts, they determine if the allegation is substantiated, unsubstantiated or unfounded based upon a preponderance of the evidence. The NYCHR had no allegations of sexual abuse during the audit period.

(d) The Auditor determined compliance with the standard based on Policy 11062.2, that requires an investigation may not be terminated solely due to the departure of the alleged abuser or victim from the employment or control of ICE. The interview with the AFOD confirmed this policy requirement. The NYCHR had no allegations of sexual abuse during the audit period.

(e) The Auditor determined compliance with the standard based on Policy 11062.2, that requires the facility to cooperate with law enforcement agencies, OPR, and other outside investigators and endeavor to remain informed about the progress of the investigation when outside agencies investigate sexual abuse or assault. The AFOD interview confirmed NYCHR would cooperate with all investigative agencies and remain informed to the extent possible. The NYCHR had no allegations of sexual abuse during the audit period

§115.172 - Evidentiary standard for administrative investigations.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

The Auditor determined compliance with the standard based on Policy 11062.2, that requires administrative investigations impose no standard higher than a preponderance of the evidence to substantiate an allegation of sexual abuse or assault, and may not be terminated solely due to the departure of the alleged abuser or victim from the employment or control of ICE. The NYCHR AFOD confirmed that the trained SDDOs utilize the preponderance of evidence as the standard when making a substantiated, unsubstantiated, or unfounded case finding in the investigations of sexual abuse. The facility had no trained SDDO, on site, during the audit to interview.

§115.176 - Disciplinary sanctions for staff.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

(a) The Auditor determined compliance with the standard based on an interview with the NYCHR AFOD, who confirmed that no ICE staff member has been disciplined for any violation of the zero-tolerance policy during the audit period.

(c)(d) The Auditor determined compliance with these standard subparts based on Policy 11062.2, that requires that upon receiving

notification from a FOD or SAC of the removal or resignation in lieu of removal of staff, for violating agency or facility sexual abuse and assault policies, the OPR will report that information to appropriate law enforcement agencies, unless the activity was clearly not criminal; and make reasonable efforts to report that information to any relevant licensing bodies, to the extent known. The NYCHR AFOD interview confirmed that all sexual abuse allegations are reported to law enforcement (FPS) and every effort would be made to notify any licensing agencies in all cases of substantiated allegations.

§115.177 - Corrective action for contractors and volunteers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) The Auditor determined compliance with these standard subparts based on Policy 11062.2, that requires an ICE employee, facility employee, contractor, or volunteer suspected of perpetrating sexual abuse or assault is removed from all duties requiring detainee contact pending the outcome of an investigation. The ISSA Project Manager and the ISSA HR Manager stated that every ISSA staff member would be subject to disciplinary or adverse action up to and including removal from their position and the Federal service for substantiated allegations of sexual abuse or violating agency sexual abuse policies. They also confirmed that no ISSA staff member has been disciplined for any violation of the zero-tolerance policy during the audit period. As noted earlier, NYCHR has no volunteers. The Auditor interviewed the NYCHR AFOD, who confirmed, as with any staff who is the subject of an allegation of sexual abuse, the facility would remove that person from all duties involving detainee contact until the outcome on the investigation. The NYCHR AFOD, the ISSA Project Manager and the ISSA HR Manager interviews confirmed that all sexual abuse allegations are reported to law enforcement (FPS) and every effort would be made to notify any licensing agencies in all cases of substantiated allegations. There were no allegations of sexual abuse at the facility during the audit period.

§115.182 - Access to emergency medical services.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) The Auditor determined compliance with these standard subparts based on Policy 11087.1, that requires the FOD to ensure that detainee victims of sexual abuse or assault have timely, unimpeded access to emergency medical and mental health treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care. Policy 11062.2 requires treatment services be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation. As noted earlier in the report, NYCHR has IHSC medical staff assigned. The interview with the HSA and AFOD confirmed detainee victims of sexual assault would be prepared for transport to MSBIH for any forensic examination. If the detainee was to remain in ICE custody, he/she would receive continuing medical services at the NYCHR until being sent to an ICE Detention Facility. The AFOD and HSA also verified that all medical treatment would be at no cost to the detainee. There were no allegations at the facility during the audit period.

§115.186 – Sexual abuse incident reviews.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) The Auditor determined compliance with these standard subparts based on Policy 11087.1, that requires the FOD to conduct a sexual abuse and assault incident review at the conclusion of every investigation of sexual abuse or assault occurring at a holding facility and, unless the allegation was determined to be unfounded, prepare a written report recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse and assault. Such review shall ordinarily occur within 30 days of ERO's receipt of the investigation results from the investigating authority. The policy further requires the FOD implement the recommendations for improvement, or document its reasons for not doing so, in a written justification. Both the report and justification shall be forwarded to the ICE PSA Coordinator. The Auditor interviewed both the AFOD and PSA Compliance Manager who both stated that at the conclusion of every allegation of sexual abuse an incident review would be completed in accordance with the 11087.1 policy and forwarded to the PSA Coordinator. There were no allegations at the facility during the audit period.

§115.187 – Data collection.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) The Auditor determined compliance with this standard subpart based on Policy 11062.2, that requires data collected pursuant to this Directive to be securely retained in accordance with agency record retention policies and the agency protocol regarding investigation of allegations. All sexual abuse and assault data collected pursuant to this Directive is maintained for at least 10 years after the date of initial collection, unless Federal, State, or local law requires otherwise. The interview with the AFOD and the PSA Compliance Manager confirmed that case records, if they were to be maintained at the NYCHR, would be in a locked records retention area with a restricted key. The Auditor was shown this secure area. The facility had no allegations of sexual abuse during the audit period.

§115.193 – Audits of standards.**Outcome:** Low Risk**Notes:**

This is the first audit for the NYCHR. (b) (7)(E) The length of stay for detainees at this facility is approximately three hours, and no detainee is generally held at the facility overnight. The facility had no allegations of sexual abuse reported within the audit period. The Auditor determined this facility qualifies for low risk.

§115.201 - Scope of audits.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

(d)(e)(i)(j) The Auditor was provided full access to the entire facility without restriction. Necessary documentation, including while onsite, was provided in a timely manner. The Auditor was able to conduct all interviews in a private setting, without interruption. Although no detainee interviews were conducted, space had been identified which would have allowed for private interviews and access to a phone for interpretive services, if necessary. Audit notices in English, Spanish, Punjabi, Hindi, Simplified Chinese, Portuguese, French, Haitian Creole, Bengali, Arabic, Russian, and Vietnamese were observed by the Auditor posted in the Hold Room advising detainees they were permitted to send confidential information or correspondence to the Auditor; however, the Auditor did not receive any correspondence from any detainee or staff.

AUDITOR CERTIFICATION

Update Audit Findings Outcome Counts by Clicking Button:

Update Outcome Summary

SUMMARY OF AUDIT FINDINGS (Use the Update Outcome Summary button, Do Not Manually Enter)	
Number of standards exceeded:	1
Number of standards met:	28
Number of standards not met:	0
Number of standards N/A:	2
Number of standard outcomes not selected (out of 31):	0
Facility Risk Level:	Low Risk

I certify that the contents of the report are accurate to the best of my knowledge and no conflict of interest exists with respect to my ability to conduct an audit of the agency under review. I have not included any personally identified information (PII) about any detainee or staff member, except where the names of administrative personnel are specifically requested in the report template.

Thomas Eisenschmidt

1/31/2023

Auditor's Signature & Date

(b) (6), (b) (7)(C)

2/10/2023

Program Manager's Signature & Date

(b) (6), (b) (7)(C)

2/10/2023

Assistant Program Manager's Signature & Date