

Detention Facility Termination of Agreement

U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Executive Associate Director (EAD) Corey Price released the *Detention Facility Termination of Agreement Standard Operating Procedure* March 2022.

This Standard Operating Procedure (SOP) consolidates the steps ICE ERO staff shall take when terminating a detention facility, either by ICE or the provider, for all non-Federal Acquisition Regulation contracts or agreements. This also applies to a contract or agreement which ends due to the performance period.

This SOP applies regardless of which entity made the decision to terminate the agreement or wind down the facility and further establishes ERO procedures to wind-down ICE operations at a facility. Adherence to this SOP will ensure the timely transfer of noncitizens, appropriate communication with stakeholders, and termination of any agency commitments related to ICE property or administrative support space within the detention facility.

Notice of Termination — A Notice of Termination discontinuing use of bed space may be issued by ICE or the agreement holder at any time during the life of a contract or agreement in accordance with the contract or agreement terms. The effective date of termination stems from the specific date of notice from either party and is based on the termination clause in the contract or agreement, and is typically 60, 90, or 120 days from the date the notice is issued. Sometimes ICE and the agreement holder may negotiate or agree to a more accelerated timeframe than what is stipulated in the contract or agreement. The effective date of termination of the agreement between ICE and the agreement holder is of critical importance to all parties. All noncitizens and ICE equipment must be removed from the facility on or before the termination date.

Contract Expiration — In addition to notices of termination, which may be issued for a variety of reasons, ICE contracts and agreements for bed space have a specified period of performance that automatically expire if a new option period is not exercised or if the contract or agreement is not renewed. In these cases, all noncitizens and ICE equipment must be removed from the facility on or before the expiration of the period of performance.

Confirm the Date of Termination of Agreement — At least 90 days prior to the expiration of the contract or agreement with no renewal, Field Office leadership shall confer with the Assistant Director for Custody Management to determine whether ICE intends to negotiate for continued use of the facility or whether the decision to terminate the contract or agreement is final. This communication will include the appropriate contracting officer. Unless Headquarters (HQ) directs otherwise, discussions or negotiations about continuing facility use shall not preclude execution of the ICE operations wind-down processes outlined below.

Identify Points of Contact — Field Office leadership shall identify two Field Office points of contact (POC) to coordinate winding-down ICE operations. One POC shall be a law enforcement officer at the Assistant Field Office Director or Officer in Charge level or above; the other POC shall be the Contracting Officer's Representative (COR) overseeing the detention contract or agreement. ERO leadership shall identify POCs from the Custody Management Division, Field

Operations Division, and the Office of Acquisition Management. The HQ POCs shall be copied on all pertinent communications from the Field Office to ensure that relevant HQ components are aware of the contract or agreement termination and the established timeline to wind-down ICE operations.

Establish a Timeline — Within five business days of receiving the notice of termination, the field POCs shall provide a projected timeline for wind-down of ICE operations at the facility. This timeline will include the following:

- An initial timeline for transfer/release that includes reduced population targets to be reached by specific dates.
- The plan shall relocate all noncitizens from the site no later than 10 days prior to the close date to provide adequate time for personnel, furniture, equipment, and IT assets to be removed once noncitizens are no longer on site.
- A timeline for when stakeholders, attorneys, and detained individuals can submit information for case reviews prior to transfers/releases/removals.
- Timelines for stakeholder notification and engagement and congressional notifications.
- Office of Public Affairs (OPA) Talking Points developed.

The ERO Assistant Director for Field Operations and Assistant Director for Custody Management must review and approve this timeline.

Notify Termination of Agreement to Intergovernmental Stakeholders — Field Office POCs shall identify all relevant governmental stakeholders with equities in the facility and ensure they are notified of the pending termination date so that their components can move or terminate operations, as appropriate. Notification will include the general timeline developed by ERO.

Internal OHS stakeholders include but are not limited to:

- ERO components, including ICE Health Service Corps (IHSC)
- Labor Relations
- ICE Office of Acquisition Management (OAQ)
- ICE Office of Immigration Program Evaluation (OIPE)
- ICE Office of the Principal Legal Advisor (OPLA)
- ICE Office of Public Affairs (OPA)
- ICE Office of Human Capital (OHC)
- ICE Office of Congressional Relations (OCR)
- ICE Office of Partnership and Engagement (OPE)
- ICE Office of Professional Responsibility (QPR)
- DHS Office for Civil Rights and Civil Liberties (CRCL)
- DHS Office of Inspector General (OIG)
- Information Technology Field Operations (ITFO)
- Office of the Chief Information Officer (OCIO)
- United States Citizenship and Immigration Service (USCIS)
- DHS Office of the Immigration Detention Ombudsman (OIDO)
- Records and Data Management Branch

- Local Executive Office for Immigration Review (EOIR). *Note: EOIR has reported that immigration courts typically require 120 days to move or terminate operations*
- Detention Operations Coordination Center (DOCC)
- Noncitizen Communication Contract Contracting Officer Representative

Upon receiving notification from the Field Office, POCs, OPE, OPA, OCR, and OCIO will collaborate with relevant external stakeholders to identify concerns and issues related to the contract termination, respond to frequently asked questions, or arrange to terminate local support. External stakeholders include but are not limited to:

- Relevant non-governmental organizations (NGOs)
- Federal, state and local-elected officials
- Government Accountability Office (GAO)
- Relevant legal service providers and attorneys of record for the noncitizens
- Local Law Enforcement Partners

Special consideration should be paid to internal and external stakeholders that maintain staff, equipment, or records on site. These entities should be notified as soon as practicable to allow for the orderly transfer of personnel and equipment. Field Office POCs shall notify HQ POCs of the presence of such personnel and equipment. HQ POCs shall communicate information regarding the facility's termination of agreement to the other relevant HQ stakeholders (e.g., OHC) and to any other entities with staff on site to facilitate personnel transfers:

- If bargaining personnel work on site, union notifications shall be made — and labor relations shall be notified.
- Notify OPA, the COR and partner agencies with staff in the facility as well as internal and external stakeholders.
- OPA will develop any media related materials as appropriate.
- The operational Field Office POC shall ensure all noncitizens and representatives are notified regarding the agreement termination.
- If the facility has relevant ICE contracts dependent on the facility (e.g., transportation contracts or leases for office space), the COR shall determine whether contracts will be continued and make notifications as appropriate.
- Based on the date identified in the timeline, notify the DOCC to stop sending new noncitizens to the facility via the DOCC established notification process.
- No later than 30 days before the termination of agreement, notify entities that conduct facility audits (e.g., ODO, CRCL, OIG, OIDO) that the facility is closing so that scheduled inspections or site visits are cancelled.
- Notify the field property coordinator of any ICE-owned equipment on site so that arrangements can be made to either excess or move the equipment. The field property coordinator may need to notify the General Services Administration (GSA) to assist with excessing property.
- If the facility is a hub for ICE Air, the unit should be notified so that it may determine whether to continue utilizing the local airport or to consider rerouting flights.
- The Field Office, in consultation and coordination with OCIO Records and Data Management Branch, shall ensure that all ICE records are maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records

Schedule (GRS) or a NARA-approved agency-specific records control schedule. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.

Implement Transfer Plan — The Field Office, in conjunction with the HQ Field Operations POC (and, if necessary, the DOCC), shall finalize and implement the timeline for transfer of noncitizens.

Once the contract termination date is confirmed, the Field Office POC will make sure that all noncitizens and their attorneys/representatives are notified of the timeline to submit information related to transfers or requests for relief. This notification will include the means of communication including emails, telephone numbers and fax numbers.

Whenever possible, to provide the legal petitioners of record and the detained individuals 10 days to submit their requests, provide a centralized email box where requests can be made and a POC from local leadership. Absent exceptional circumstances, there will be a temporary suspension on transfers during this 10-day period. FODs should continue to utilize the review process for removals in accordance with current policy and guidance. Removals and routine releases are expected to continue during this time.

Prior to any transfer, the Field Office will review all cases in custody to ensure all aggravating and mitigating factors in each case were considered as described in the current enforcement priorities. The Field Office will consult with OPLA, as appropriate, in cases where there may be legal hurdles to transfers. The case review completed by the local office is subject to additional review and clearance by the ERO Senior Reviewing Official or another designated reviewing entity at HQ. Routine removals and any releases from custody can continue.

Once the transfer plan has been completed and approved, the Field Office operational POC will:

- Notify the DOCC of the number of noncitizens to be relocated so that it can begin coordinating transfers to other facilities.
- Notify local IHSC of any noncitizens with medical needs so that IHSC can identify detention that meets the detainee's medical needs.

The Field Office shall execute the detainee transfer plan:

- The operational Field Office POC will inform the HQ POCs of the initial transfer date as soon as practicable and report on progress as appropriate or necessary to the Public Affairs Officer HQ POCs will notify relevant governmental stakeholders. OPE will notify relevant non-governmental stakeholders.
- The Field Office will complete I-830s to notify OPLA of the detained individual's change of address at time of transfer.
- The Field Office, if necessary, will ship A-files and property per the receiving office's instructions at time of transfer.
- The Field Office will request the local OPLA office to complete the change of venue forms for the noncitizens moving to different court locations.

- ERO and facility medical staff will ensure that released and transferred noncitizens will receive all required medication and medical summaries to ensure continuity of care as outlined in the detention standards.
- ERO and facility staff will ensure that all noncitizens are released in accordance with all relevant safe release policies and safeguards.
- ERO will confirm with the facility that transferred noncitizens and their attorneys are aware of when they will have access to counsel in the destination facility (i.e., post COVID quarantine).

After all noncitizens have been removed from the facility, the following actions shall occur:

- The COR and field property custodian shall work with GSA to relocate or excess any furniture or equipment that may be on site.
- The COR shall notify ITFO to shut down and terminate the site.
- If applicable, IHSC should begin moving their equipment off site.
- The COR will verify and pay any outstanding invoices as soon as possible.
- The COR will work with the OAQ contracting officer to close out the Inter-Governmental Service Agreement or contract.

Recordkeeping — The Field Office, in consultation with OCIO Records and Data Management Branch, will ensure ICE records are maintained in accordance with an applicable NARA GRS or a NARA-approved agency-specific records control schedule. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.

No Private Right — This SOP is an internal policy statement and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any part in any administrative, civil, or criminal matter.