

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Policy Number 11003.2: Notification and Reporting of Detainee Deaths

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Superseded: ICE Directive 7-9.0, "Notification and Reporting of Detainee Deaths" (October 1, 2009)

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** The purpose of this Directive is to provide policy and procedures to be followed when providing initial notification and ongoing reporting of the death of a detainee in the custody of U.S. Immigration and Customs Enforcement (ICE). This Directive enables ICE personnel to respond appropriately to a detainee death and includes procedures for providing notification of a detainee death within ICE and the Department of Homeland Security (DHS), and to Congress, the media, and nongovernmental organizations.
2. **Policy.** It is ICE policy to ensure appropriate and timely notification and ongoing reporting of the death of a detainee in accordance with the procedures in this Directive. The procedures apply to any detainee death that occurs, including but not limited to, a death in a detention facility, medical facility, or in transit to or from any such facility.
3. **Definitions.** None.
4. **Responsibilities.**
 - 4.1. **The Office of Enforcement and Removal Operations (ERO) Executive Associate Director** is responsible for:
 - 1) Notifying the Office of the Director and appropriate ICE and DHS program offices of a detainee death. At a minimum, "appropriate" program offices notified include the Offices of the Principal Legal Advisor (OPLA), Professional Responsibility (OPR), Public Affairs (OPA), Congressional Relations (OCR), and State, Local, and Tribal Coordination (OSLTC), and DHS Offices of Health Affairs (OHA) and Civil Rights and Civil Liberties (CRCL).
 - 2) Ensuring all medical reports are provided to the appropriate entity (e.g. OHA, ICE Health Services Corps (IHSC), etc.) to initiate a mortality review.
 - 4.2. **The ERO Assistant Director for Detention Management (AD DM)** is responsible for:
 - 1) Conducting an internal review of all facility inspection records where the detainee death occurred.

- 2) Submitting a report of the internal review to ICE senior management, appropriate ICE program offices, and DHS CRCL and the Office of Inspector General (OIG).
- 3) Gathering and preserving all documents and evidence relevant to the detainee's mortality, including electronically stored information and electronic mail.
- 4) Providing autopsy and toxicology results, a copy of all Medical Payment Authorization Requests (MedPAR), or any other similar authorization(s), a copy of the death certificate, and all other relevant documents to the appropriate entity for a mortality review, and to CRCL, OPR, and OIG (if the investigation is being conducted by OIG).
- 5) Maintaining a cumulative report for each fiscal year of detainee deaths in ICE custody.

4.3. The ERO Field Office Directors (FODs) are responsible for:

- 1) Contacting ERO's Assistant Directors for Field Operations and Detention Management, the Joint Intake Center (JIC), the local Office of Chief Counsel, the appropriate state agencies, the local ICE public affairs officers, and the IHSC.
- 2) Coordinating with the appropriate consulate to notify the next-of-kin.
- 3) Sending condolence letters to the next-of-kin.

4.4. The ICE Health Service Corps (IHSC) Medical Director is responsible for ensuring that the mortality review is completed by the appropriate entity.

4.5. The Office of Professional Responsibility (OPR) is responsible for:

- 1) Notifying OIG through the JIC of the detainee death.
- 2) Upon declination by OIG, initiating an investigation into the circumstances surrounding the death of a detainee.
- 3) Providing the OPR Detainee Death Review to ICE senior management, the appropriate entity conducting the mortality review, and CRCL.

4.6. The Office of Congressional Relations (OCR) is responsible for:

- 1) Notifying Congress of a detainee death.
- 2) Providing a cumulative report to appropriate Congressional Committees each quarter.

4.7. The Office of Public Affairs (OPA) is responsible for notifying the media of the detainee death in accordance with the procedures in section 5.3.

- 4.8. The Office of State, Local and Tribal Coordination (OSLTC)** is responsible for notifying nongovernmental organizations (NGOs) of the detainee death.
- 4.9. The Office of the Principal Legal Advisor (OPLA)** is responsible for initiating its own inquiry and collection of evidence if deemed appropriate.

5. Procedures.

5.1. Notification and Reporting Within DHS.

- 1) Immediately following the death of a detainee:
 - a) The FOD in the jurisdiction where the death occurred shall:
 - i) Contact the ERO Assistant Directors for Field Operations and Detention Management and the JIC to report the death; and
 - ii) Report the detainee death as a “significant incident” to the Joint Intelligence Operations Center (JIOC) using the electronic ICE Significant Event Notification (SEN) system.
 - b) The ERO Executive Associate Director shall provide notification to the Office of the Director (OD).
 - c) The JIC, upon notification, shall provide notification to the OIG.
- 2) Within 24 hours of the death of a detainee:
 - a) The FOD shall provide email, telephonic, or in person notification to:
 - i) The appropriate Office of Chief Counsel (OCC) in order for the OCC to notify the local attorney(s) and court officials of the death if there is a case pending;
 - ii) The appropriate state agency(ies), in states that require notification;
 - iii) The local ICE public affairs officer; and
 - iv) IHSC (if the death did not occur in an IHSC-staffed facility).
 - b) The ERO Executive Associate Director shall:
 - i) Provide email or telephonic notification to the OHA and CRCL; and
 - ii) Provide written notification to OD and the appropriate ICE offices, to include at a minimum, OPLA, OPR, OPA, OCR, and OSLTC, via a Director’s Note.

- d) House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law;
 - e) Senate Homeland Security and Governmental Affairs Committee;
 - f) House Homeland Security Committee;
 - g) Senate Appropriations Committee; and
 - h) House Appropriations Committee.
- 2) OCR shall coordinate with the ICE Office of the Chief Financial Officer before sending notifications to the House and Senate Appropriations Committee staff.
 - 3) In instances where the consulate or next-of-kin have not yet been contacted, OCR shall advise Congress accordingly.
 - 4) Upon notification of the next-of-kin, or when the next-of-kin cannot be located but reasonable efforts have been made by ERO (in coordination with the consulate) to locate the next-of-kin, OPA shall provide a media release to the local press and the Associated Press, and post the media release on ICE's internet website.
 - 5) OSLTC shall provide a copy of the media release to NGOs via the ICE/NGO working group co-chairs.
 - 6) In instances where the consulate has been notified of a detainee's death, and the next-of-kin have not been located yet efforts to locate them continue, notifications to Congress, the media, or NGOs shall include information that efforts to reach next-of-kin are ongoing.
 - 7) Nothing in this section shall be construed to prohibit ICE personnel from providing additional notifications of the detainee death if deemed necessary by senior ICE officials.

5.4. Ongoing Reporting Requirements.

- 1) OPR shall:
 - a) Initiate an investigation into the circumstances surrounding the death of the detainee in accordance with OPR policies and procedures if DHS OIG declines to investigate the death;
 - b) Provide the OPR Detainee Death Review to ICE senior management, the appropriate entity conducting the mortality review, and CRCL; and
 - c) Assist and coordinate with CRCL as needed in their death review/investigation.

- 3) Within 48 hours of the detainee death, the ERO Executive Associate Director shall ensure that copies of all available medical reports are provided to the appropriate entity (e.g., OHA, IHSC, etc.) to initiate a mortality review, and the IHSC Medical Director shall ensure that the mortality review is completed within 45 days. All other relevant documents shall be provided in accordance with section 5.4.
- 4) All notifications provided in accordance with this section, along with an acknowledgement that the notification was received (if possible), shall be documented and maintained in the decedent's A-file.

5.2. Notification to Consulate and Detainee's Next-of-Kin.

- 1) Within 24 hours of the detainee death:
 - a) The FOD shall telephonically notify the applicable consulate of the death and coordinate with consular officials, as necessary, to locate the next-of-kin.
 - b) The FOD shall ensure that, unless consular officials are unwilling to do so, all notifications to next-of-kin are made by consular officials.
 - c) If consular officials are unwilling to notify next-of-kin, the FOD shall telephone the person named as the next-of-kin to inform them of the death in a language he or she can understand.
- 2) Within 48 hours of the next-of-kin being notified, the FOD shall send a condolence letter to the next-of-kin (see attached template), with a copy to the applicable consulate.
- 3) All notifications provided in accordance with this section, along with an acknowledgement that the notification was received (if possible), shall be documented and maintained in the decedent's A-file.

5.3. Notification to Congress, the Media, and Nongovernmental Organizations.

- 1) Within 24 hours of the death of a detainee, or the next business day, OCR shall provide e-mail notification to the Chair and Ranking Member of the following Committees, as well as those House and Senate members who have jurisdiction over where the death occurred:
 - a) Senate Judiciary Committee;
 - b) House Judiciary Committee;
 - c) Senate Judiciary Committee, Subcommittee on Immigration, Refugees, and Border Security;

- 2) OPLA shall initiate its own inquiry and collection of evidence into the circumstances surrounding the detainee death if deemed appropriate.
- 3) The ERO Assistant Director for Detention Management (AD DM) shall:
 - a) In coordination with OPR, initiate an internal review of all facility inspection records for the detention facility at which the death occurred and a review of all contract documentation for the detention facility where the death occurred. If the death occurs at a medical facility or while the detainee is in transit, the AD DM shall require such review at the facility where the decedent was last held in custody.
 - b) Submit a report of the internal review within 14 calendar days of the detainee death to ICE senior management, OPR, the appropriate entity conducting the mortality review, CRCL, and OIG (if the investigation is being conducted by OIG).
 - c) Gather and preserve all documents and evidence relevant to the detainee's mortality, including electronically stored information and electronic mail. In the case of video, timely preservation is particularly essential.
 - d) Provide autopsy and toxicology results (if applicable), a copy of all MedPAR or any other similar authorization(s), a copy of the death certificate, and all other relevant documents (i.e., state and local law enforcement investigatory information), as soon as they become available, to the appropriate entity for inclusion in the mortality review, CRCL, OPR and OIG (if the investigation is being conducted by OIG).
 - e) Maintain a cumulative report of those individuals who have died while in ICE custody each fiscal year. To ensure that the report is always current and accurate, the AD DM shall update the report as soon as information becomes available. At a minimum, the report (see attached template) shall include the alien's name, A-number, date of death, location at time of death, type of death (natural causes, suicide, homicide, accidental overdose, etc.), and cause of death as reported on the death certificate.
 - f) Provide OCR, OHA, OPR, OIG, and CRCL copies of the cumulative report each quarter and certify the accuracy of the report prior to its distribution.
- 4) OCR shall provide a copy of the cumulative report to the appropriate Congressional Committees each quarter.

6. Authorities/References.

6.1. National Detention Standard, Terminal Illness, Advanced Directives and Death.

- 6.2. Performance Based National Detention Standard, Terminal Illness, Advanced Directives and Death.
- 6.3. DHS Management Directive 0810.1, The Office of the Inspector General, Appendix A.
- 6.4. Memorandum from Margo Schlanger, Officer, DHS Office for Civil Rights and Civil Liberties, to Kumar Kibble, Deputy Director, U.S. Immigration and Customs Enforcement, "ICE Coordination with the Office for Civil Rights and Civil Liberties on the deaths in ICE Custody, including deaths of ICE detainees" (November 18, 2010).
- 7. **Attachments.**
 - 7.1. Condolence Letter Template
 - 7.2. Quarterly Report Template
- 8. **No Private Right Statement.** This directive is an internal policy statement of ICE. It 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 party in any administrative, civil, or criminal matter.



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