



Explainer: U.S. Immigration Detention and Custody Standards

Introduction

Immigration detention and custody facilities hold immigrants who are apprehended within the U.S. or at U.S. borders for the duration of their immigration proceedings. These facilities are run by various government agencies, including Immigration and Customs Enforcement (ICE), Office of Refugee and Resettlement (ORR), and, for short-term detention, U.S. Customs and Border Protection (CBP). Some private prisons and local jails also [serve](#) as detention facilities, often under contract with ICE. While there are constitutional and statutory standards that govern the operation of all immigration detention and custody facilities, the specific standards applied [vary](#) based on the agency operating the facility.

The U.S. Constitution acts as a baseline standard that applies to all facilities that detain immigrants. Under the Constitution, the government has a duty to provide for the [“basic human needs”](#) of people in its custody, a class that includes immigrant detainees. These “basic human needs” include “food, clothing, shelter, medical care, and reasonable safety.” The Constitution is supplemented by statutory law, most notably the [Immigration and Nationality Act \(INA\)](#). Under this act, federal immigration officials must establish [“acceptable conditions of confinement.”](#)

Agency Detention and Custody Standards & Inspections

Standards for Immigration Customs and Enforcement (ICE) Detention Facilities

ICE’s predecessor, the U.S. Immigration and Naturalization Service (INS), first issued a set of nationwide detention standards in 2000, known as the [National Detention Standards](#) (NDS). These standards function as agency guidance and have since been amended multiple times, most recently in [2019](#). The NDS apply to all non-dedicated facilities, which are facilities also used for purposes [besides immigration detention](#), like holding state or local inmates in addition to those in ICE custody. In contrast, the [Performance Based National Detention Standards](#) (PBNDS) apply to dedicated immigration detention facilities that hold only [those in ICE custody](#). The PBNDS standards have been [revised](#) twice, most recently in 2016.

Immigration detention is categorized as a type of civil detention, meaning that individuals in immigration detention facilities should not be placed in [conditions meant to punish](#) them. However, ICE’s national standards draw from [correctional facility standards](#). Both the [NDS](#) and [PBNDS](#) establish standards for safety, security, order, care, activities, justice, and administration and management. These standards encompass food service, medical care, the distribution of personal hygiene items, access to recreational activities, telephone access, opportunities to engage in religious practice, availability of legal materials, among other issues.

Despite the overlap in issue coverage between NDS and PBNDS standards, the PBNDS offers [more protection](#) than the NDS, particularly when it comes to phone access, legal visitation, medical care, solitary confinement, religious practice, and disability accommodation. Importantly, neither the NDS nor PBNDS is [codified into law](#) as a statute or regulation. Because they are only agency guidance, both sets of standards are advisory—they are not legally binding and a failure to meet them is not met with serious, if any, consequences. As a result, the NDS and PBNDS only have limited influence over the actual conditions in immigration facilities.

ICE also has contracts with a range of private prison companies and local jails. Despite the existence of the aforementioned detention standards, they are not uniformly applied in private prisons and county jails, as their contracts are [individually negotiated](#). Under such contracts, ICE first creates a contract with a local government, and the local government either operates it themselves or [subcontracts](#) the facility's operations to a private company. Contractors aren't required to adopt the most recent standards when they enter these contracts, creating a [patchwork system](#) in which standards vary. As previously mentioned though, these contracts need to meet minimum constitutional standards.

Separate standards apply to ICE facilities dedicated to [family detention](#), in which immigrant parents are detained with their children. There are currently two [ICE-run family detention centers](#) in operation. ICE has contracts with private prison operators to run both the South Texas Family Residential Center in Dilley and the Karnes County Detention Facility. Family detention centers are required to follow the 2020 [Family Residential Standards](#) (FRS) published by ICE. The FRS aims to promote family unity by allowing family members unrestricted access to each other at all times. Like the NDS and PBNDS, the FRS lay out guidance for safety, security, order, care, activities, justice, and administration and management. These categories similarly cover food service, available health care, personal hygiene standards, access to education for children, available recreation programs, religious practices, telephone access, visitation policies, and access to legal resources.

Standards for U.S. Customs and Border Protection (CBP) Detention Facilities

The National Standards on Transport, Escort, Detention and Search (TEDS) are the [controlling standards](#) for those in U.S. Customs and Border Protection (CBP) detention facilities. TEDS establishes the [minimum requirements](#) that both Border Patrol and the Office of Field Operations (OFF) must adhere to when detaining individuals in [short-term custody](#). TEDS requires that individuals in detention be given basic personal hygiene items, regular meals and snacks, access to drinking water, and access to restroom facilities. Additionally, individuals must be provided with a list of legal service providers and their contact information, but the standards leave the right to make a phone call to the discretion of local CBP offices.

Critically, [TEDS](#) states that CBP should generally not hold individuals for more than 72 hours, and that “every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.” In practice, many individuals are held for much longer than 72 hours, and there are even reports of individuals being held for [over a month](#). Again, because TEDS are agency guidelines, there are no consequences for violations.

Inspections and Upholding Standards in ICE and CBP Facilities

Internal and external inspections are carried out at ICE and CBP-operated detention facilities to ensure standards are met. ICE's Office of Professional Responsibility Office of Detention and Oversight (ODO) conducts [preannounced inspections](#) of facilities. Although Congress requires that ICE publish these inspection reports, ICE evades detention standards and consequences of noncompliance. In fact, ICE circumvents detention standards by notifying Congress that following them would be [too expensive](#). There also is a [provision](#), Section 209 of the Consolidated Appropriations Act 2019, that withholds funds for an immigration detention facility from ICE if a contracted facility fails two recent performance evaluations. However, ICE avoids this outcome by ensuring facilities do not fail inspections.

Oversight bodies within the Department of Homeland Security (DHS) also conduct both [announced and unannounced inspections](#) of detention facilities operated by ICE and CBP. However, the DHS Office of Inspector General (OIG) found that advance notice of inspections enables facilities to [temporarily fix](#) violations so that the facilities appear to be meeting the standards. DHS's Office of Civil Rights and Civil Liberties (CRCL) conducts regular reviews and visits, which it coordinates [ahead of time with ICE](#), while the DHS OIG and Government Office of Accountability (GAO) conduct unannounced visits. [Reports](#) of these unannounced visits have revealed substandard conditions in immigration facilities, and these violations often generate news coverage. Notably, there have been [reports](#) of individuals not receiving medical care, being served rotten food or no food at all, and numerous [deaths](#).

In 2020, Congress created the Office of the Immigration Detention Ombudsman (OIDO) within the DHS. Its mission is to ensure [safe, humane conditions](#) in detention facilities and [offer another way](#) for individuals currently detained or who were previously detained to seek support or submit complaints. However, this office does not have the authority to push for large-scale reforms in immigration detention facilities.

In March 2025, the Trump administration moved to [close the OIDO](#) along with two other DHS offices—the CRCL and the Office of the Citizenship and Immigration Services (CIS) Ombudsman—all three of which assist immigrants and manage complaints they have related to interactions with immigration officials, including those working in detention facilities. Following lawsuits from several nonprofit organizations, the DHS [reopened](#) all three of these offices, but with “skeleton” teams that were significantly [reduced](#) from previous staff sizes.

Office of Refugee Resettlement (ORR) Facilities and Children in Immigration Detention

ICE and CBP [must transfer unaccompanied migrant children](#) to the custody of the Department of Health and Human Services (HHS) under the Office of Refugee Resettlement (ORR) within 72 hours. ORR retains custody of children under the age of 18 who are either alone or separated from the adult(s) they were traveling with. ORR then places these children in permanent shelters, which can include shelters or group homes, foster care, treatment centers, or other therapeutic facilities. ORR facilities are not detention facilities—unaccompanied children residing in those facilities are not considered to be in immigration detention. The [Trafficking Victim Protection Reauthorization Act of 2008](#) (TVPRA) requires that ORR place unaccompanied children in the least restrictive setting possible that is in the “best interest” of the child. It requires family reunification whenever possible. The TVPRA provides [legal protections](#) to unaccompanied children as well, including pro bono legal representation, access to legal orientations, and access to child advocates.

The [Flores Settlement Agreement of 1997](#) establishes mandatory minimum conditions for [children in federal immigration custody](#), which includes ICE, CBP, and ORR custody. First, the Flores Settlement mandates that unaccompanied minors be [released](#) from detention “without unnecessary delay”—a court ruling has set this as a maximum period of [20 days](#)—to a parent or adult relative or licensed juvenile program. Moreover, Flores guarantees certain [child welfare protections](#) to children in immigration custody. It [requires](#) that licensed facilities with children are “safe and sanitary” and set standards for food, water, bedding, temperature, and hygiene. Beyond these basic needs, facilities must [provide](#) educational services, recreation and leisure time, counseling, acculturation and adaptation services, religious services, family visitation, privacy, and legal services to unaccompanied minors.

ORR's [Unaccompanied Alien Children Bureau Policy Guide](#) administers guidance on the proper placement, care, and services that unaccompanied children in their custody should receive. It sets standards around visitation and phone calls, the items children must receive for personal hygiene, and details the nutritional, health care, recreational, educational, and legal services children should have access to. It also describes ORR's [monitoring policies](#), including unannounced and announced monthly visits to sites, as well as more comprehensive week-long site visits at a minimum of every two years.

Under the Trump administration, ORR implemented [more stringent vetting requirements](#) that parents and guardians must fulfill before children can be released to them. These requirements mandate that parents and relatives undergo DNA testing, show proof of income, and produce proof of their identity with a U.S. ID. Undocumented [parents](#) have struggled to produce these documents because they can't legally obtain them, resulting in children remaining in ORR's custody for much longer than in the past. [ORR data](#) show that in March, children were in ORR facilities for an average of 175 days, while in December, the average was 67 days. ORR has also begun to conduct "[wellness checks](#)" on released unaccompanied immigrant children in their homes or at school, but some family members of children have been [detained](#) during these so-called wellness checks. These policies have [discouraged](#) parents and guardians from uniting with children as they fear being subject to arrest and potential deportation if they come forward. Thus, the new requirements have led to a chilling effect on parents and guardians, causing children to remain in ORR custody for much longer than the maximum period of 20 days the Flores Agreement establishes.

Conclusion

No one set of U.S. immigration detention and custody standards govern all facilities—they vary by facility type, with government-run facilities having more exacting standards, and privately-run facilities having laxer standards. Yet, the lack of uniformity and non-binding nature of detention and custody standards have led to many problems. Detention facility inspection reports released by the government itself and studies by external monitors reveal that facilities often fall short of reaching existing standards, with conditions not even meeting minimum health and safety requirements. Yet, since most standards are not set by statute or regulation, they are not mandatory and there are few consequences for failing to abide by them.

With Congress considering massive increases in detention funding and significantly expanding the number of people in immigration detention in the [One Big Beautiful Bill Act](#), detention and custody standards are increasingly relevant. This potential unprecedented increase in immigration detention facility capacity underscores the necessity of a closer scrutiny of existing standards.