

INS DETENTION STANDARDS

DETAINEE GRIEVANCE PROCEDURES



I. POLICY

Every facility will develop and implement standard operating procedures (SOP) that address detainee grievances. Among other things, each SOP must establish a reasonable time limit for: (i) processing, investigating, and responding to grievances; (ii) convening a grievance committee to review formal complaints; and (iii) providing written responses to detainees who filed formal grievances, including the basis for the decision. The SOP must also prescribe procedures applicable to emergency grievances. All grievances will receive supervisory review, and include guarantees against reprisal.

II. APPLICABILITY

The standards provided in this Detention Standard shall apply to the following facilities housing INS detainees:

1. Service Processing Centers (SPCs);
2. Contract Detention Facilities (CDFs); and
3. State or local government facilities used by INS through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours; referred to as "IGSA facilities."

Within the document additional implementing procedures are identified for SPCs and CDFs. Those procedures appear in italics. IGSA facilities may find such procedures useful as guidelines. IGSAs may adopt, adapt or establish alternatives to, the procedures specified for SPCs/CDFs, provided they meet or exceed the objective represented by each standard.

See the separate "Definitions" Standard for the meaning of certain terms used in this document.

III. STANDARDS AND PROCEDURES

A. Grievance Procedure

1. Informal/Oral Grievance

The facility shall make every effort to resolve the detainee's complaint or grievance at the lowest level possible, in an orderly and timely manner. Each facility will institute procedures for informal resolution of oral grievances. The OIC will establish procedures for detainees to orally present the issue of concern informally to any staff member at any time within *five days* of the event that is precipitating the grievance.

Translating assistance shall be provided upon request.

The informal grievance procedure offers the detainee the opportunity to resolve his/her cause for complaint before resorting to the more time-consuming and bureaucratic formal procedure, which requires that all communication between the detainee and the facility be in written form.

In SPCs/CDFs, staff members receiving a detainee's oral grievance will, if the issue falls within his/her scope of responsibility, attempt to resolve the issue informally. If the grievance is beyond the scope of that employee's authority, he/she will notify the Supervisory Detention Enforcement Officer (SDEO) or contract equivalent of the grievance as soon as practical. The SDEO may try to resolve the matter at that point, or may have the detainee initiate a written grievance. The grievance procedures established by the OIC will address specific steps in the informal resolution of detainee complaints.

The detainee is free to bypass or terminate the informal grievance process, and proceed directly to the formal grievance stage. If an oral grievance is resolved to the detainee's satisfaction at any level of review, the staff member need not provide the detainee written confirmation of the outcome, however the staff member will document the results for the record and place his/her report in the detainee's detention file.

2. Formal/Written Grievance

The OIC must allow the detainee to submit a formal, written grievance to the facility's grievance committee. The detainee may take this step because he/she is not satisfied with the outcome of the informal process, or because he/she decides to forgo the informal procedures. The detainee shall be given the opportunity to obtain assistance from another detainee or facility staff in preparing a grievance.

Illiterate, disabled, or non-English speaking detainees shall be given the opportunity to receive additional assistance upon request.

In SPCs/CDFs, the detainee may file a formal grievance, no later than five days after the event or after the unsuccessful conclusion of an informal grievance.

The grievance procedures follow:

- 1. SPC/CDF staff will provide the detainee a grievance form upon request.*
- 2. Staff will advise the detainee that the grievance form can cover a single complaint, or a cluster of closely related issues. Each grievance form filed by the detainee must contain only one subject or the form will be rejected without review. Staff will provide the number of forms the detainee requests when informed of this policy.*
- 3. The grievance form shall be delivered by authorized personnel (not detainees) without reading, altering, or delay. The shift supervisor or staff member designated to receive grievances will accept the grievance form signed and dated by the*

detainee. If the detainee claims that the issue is sensitive or the detainee's safety or well-being would be jeopardized if others in the facility learned of the grievance, the detainee may seal the grievance in an envelope, clearly mark the envelope "Sensitive" and submit it directly to the OIC. In that case, the grievance must include the reason for circumventing the chain of command.

- 4. A detainee may obtain assistance from another detainee, housing officer or other facility staff in preparing a grievance. Outside sources, such as family members or legal representatives, may also provide assistance. Staff will not accept the detainee's need to obtain assistance as justification for exceeding the time limit on submissions unless staff caused the delay.*
- 5. No detainee may submit a grievance on another detainee's behalf.*
- 6. The OIC shall ensure that the standard operating procedures cover detainees with special requirements, including those who are disabled, illiterate, or know little or no English. Each facility will accommodate the special assistance needs of such detainees in preparing and pursuing a grievance.*

When the first-line supervisor receives a formal grievance, he/she will officially meet with the detainee to attempt to resolve the issue. If the grievance cannot be resolved to the satisfaction of the detainee, the supervisor will notate the detainee grievance form and refer the written grievance to the next level of supervision in his/her chain of command or to the appropriate department head. The responsible department head or staff officer will act on the grievance within five working days through informal or formal resolution. The responsible department head will provide the detainee with a written response consisting of both the decision and the reasons for that decision. When the detainee is illiterate, disabled or non-English speaking, the decision will be read to him/her or attempts will be made to translate it into his/her language.

If the detainee does not accept the department head's solution, a Detainee Grievance Committee (DGC) will convene to study the grievance within five working days of the detainee's "appeal." In an SPC facility, the Assistant Officer-In-Charge (AOIC) will chair the DGC, to include two department heads or their representatives. In CDFs, at least one member of the grievance committee will be an INS employee.

No one named in the complaint, involved with earlier resolution attempts or with helping prepare the written grievance; may participate in the grievance committee.

The DGC may call witnesses, inspect evidence or otherwise gather facts essential to an impartial decision. The committee will offer the detainee the opportunity to appear before it to present his/her case, answer questions and respond to conflicting evidence or testimony. Within five working days of reaching a decision, the DGC will provide the detainee with its response to the grievance, in writing. The written response will state the decision and the reasons for it.

B. Emergency Grievances

Each facility shall implement procedures for identifying and handling an emergency grievance. An emergency grievance involves an immediate threat to a detainee's safety or welfare. Once the receiving staff member approached by a detainee determines that he/she is in fact raising an issue requiring urgent attention, emergency grievance procedures will apply.

In SPCs/CDFs, the detainee may elect to present his/her emergency grievance directly to the SDEO or contract equivalent.

If the SDEO or contract equivalent concurs that the grievance represents an emergency, it will receive immediate attention.

If the matter is resolved at the shift level, the supervisor involved will prepare a report for the OIC, describing the problem and its resolution. Emergency grievances not resolved at the shift level will be sent up the chain of command until the matter is resolved.

If the SDEO or contract equivalent determines the matter is not an emergency, standard procedures will apply.

C. Appeal

If the detainee does not accept the grievance committee's decision, he/she may appeal it to the OIC. All facilities shall implement procedures for addressing detainee appeals.

In SPCs/CDFs, after reviewing the DGC's finding with the AOIC, the OIC may uphold, modify or reverse it. The OIC will provide the detainee a written decision within five days of receiving the appeal. The decision will be in writing and will contain a discussion of the decision and the facts upon which it is based. When the detainee is illiterate, disabled or non-English speaking, the decision will be read to him/her or attempts will be made to translate it into his/her language. The OIC will use the normal routing system of the facility to send the written decision to the detainee.

The OIC's decision is final; it cannot be appealed. However, depending on the nature of the grievance, the OIC may choose to forward the grievance file to the Assistant District Director for Detention and Removal (ADD/DRO) for notification and review.

CDFs and IGSA facilities must allow any INS detainee dissatisfied with the facility's response to his/her grievance to communicate directly with INS.

D. Retaliation

Staff will not harass, discipline, punish, or otherwise retaliate against a detainee lodging a complaint. However, if an individual establishes a pattern of filing nuisance complaints or otherwise abusing the grievance system, staff may refuse to process subsequent complaints.

E. Recordkeeping and File Maintenance

Each facility will devise a method for documenting detainee grievances. At a minimum, the facility will maintain a Detainee Grievance Log.

In SPCs/CDFs, staff will assign each grievance a log number, enter it in the space provided on the Detainee Grievance Form, and record it in the Detainee Grievance Log. The log entry number and the detainee grievance number must match. Documentation will include the receipt date of the grievance and the date and disposition of the grievance. Staff will enter grievances into the Detainee Grievance Log in chronological order. Nuisance or petty grievances and grievances rejected on procedural grounds, e.g., filed after the deadline, must also be entered into the grievance log with the appropriate notation, e.g., "late."

A copy of the grievance will remain in the detainee's detention file for at least three years. The facility will maintain that record for a minimum of three years and subsequently, until the detainee leaves INS custody.

F. Allegations of Officer Misconduct

Staff must forward all detainee grievances containing allegations of officer misconduct to a supervisor or higher-level official in the chain of command. CDFs and IGSA facilities must forward detainee grievances alleging officer misconduct to INS. INS will investigate every allegation of officer misconduct.

INS staff must comply with the OI 287.10 requirement to report allegations of officer misconduct to a supervisor or higher-level official in his/her chain of command, and/or to INS Office of Internal Audit and/or the DOJ Office of the Inspector General. This reporting requirement applies without exception to all detainee allegations of officer misconduct, whether formally or informally submitted.

G. Detainee Handbook

The facility shall provide each detainee, upon admittance, a copy of the detainee handbook or equivalent. The grievance section of the detainee handbook will provide notice of the following:

1. The opportunity to file a grievance, both informal and formal.
2. The procedures for filing a grievance and appeal, including the availability of assistance in preparing a grievance.
3. The procedures for resolving a grievance or appeal, including the right to have the grievance referred to higher levels if the detainee is not satisfied that the grievance has been adequately resolved. The level above the CDF-OIC is the INS-OIC.
4. The procedures for contacting the INS to appeal the decision of the OIC of a CDF or an IGSA facility.


5. The policy prohibiting staff from harassing, disciplining, punishing or otherwise retaliating against any detainee for filing a grievance.
6. The opportunity to file a complaint about officer misconduct directly with the Justice Department by calling 1-800-869-4499 or by writing to:

Department of Justice
P.O. Box 27606
Washington, DC 20038-7606

IV. AMERICAN CORRECTIONAL ASSOCIATION STANDARDS REFERENCED:

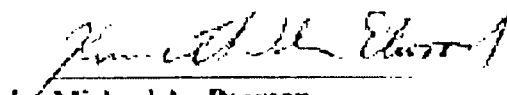
American Correctional Association Standards for Adult Local Detention Facilities, 3rd Edition: 3-ALDF-3E-11.

Approval of Standard



Michael D. Cronin
Acting Executive Associate Commissioner
Office of Programs

Date



Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

Date

(A grievance must be filed within 5 days of original incident or issue)

Grievance # _____

Detainee Name: _____ A# _____ Housing Unit: _____

Complaint / Comments: _____

Action requested by detainee: _____

Detainee Signature: _____ Date / time: _____

Housing Unit Officer: _____ Date / time: _____

INFORMAL [] Resolution is accepted by detainee: (to be completed within 24 hours and only if resolved prior to hearing)

This grievance has been informally resolved as follows:

Detainee Signature: _____ Date / time: _____
Staff Member: _____ Date / time: _____
Supervisory Review: _____ Date / time: _____

FORMAL [] Informal Resolution is not accepted by detainee and the grievance has been assigned to the following Department for formal resolution: [] Deportation [] Detention [] Administration
(Response to detainee within five (5) business days is required)

Departmental Findings/Actions Taken: _____

Dep. Head: _____

Dep. Staff: _____ Dep. Staff _____

Date of Findings: _____ Date Returned to Detainee: _____

(Detainee return within five days of receipt and check the appropriate box)

I would like this matter:

- Referred to the Detainee Grievance Committee (DGC).
- I agree with the resolution.

Detainee Signature: _____ Date / time: _____
Housing Unit Officer: _____ Date / time: _____

DETAINEE GRIEVANCE FORM

DGC Members: _____
Assistant Officer-In-Charge, or Designee

Dep. Head: _____ Dep. Head: _____

Other: _____ Other: _____
(name, title) (name, title)

Response: _____

Date Returned to Detainee: _____

Detainee - Return within (5) days of receipt and check appropriate box:

- I agree with the DGC response.
- I disagree with DGC response and I wish to appeal to the Officer-In-Charge.

Detainee Signature: _____ Date: _____

Housing Unit Officer: _____ Date: _____

(To be completed by Detention Operations Supervisor or equivalent)

Grievance appealed to the Officer-In-Charge: _____
(Date)

Grievance forwarded to the Officer-In-Charge for action: _____
(Date)

Office-In-Charge's Findings/Actions Taken: _____

Date Returned to Detainee: _____

APPENDIX 4

