

1 DECLARATION OF JAY M. BROOKS
2 SUPERVISORY DETENTION AND DEPORTATION OFFICER ,
3 CUSTODY MANAGEMENT DIVISION
4 ENFORCEMENT AND REMOVAL OPERATIONS
5 UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT
6 DEPARTMENT OF HOMELAND SECURITY

7
8 I, Jay M. Brooks, pursuant to 28 U.S.C. § 1746, declare the following
9 statement to be true and correct to the best of my knowledge and belief and make
10 this declaration under the penalty for perjury:

11 **I. PERSONAL BACKGROUND**

12 1. I am employed by the U.S. Department of Homeland Security
13 (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”), Office of
14 Enforcement and Removal Operations (“ERO”), as a supervisory detention and
15 deportation officer (“SDDO”) within the Custody Management Division (“CMD”),
16 at ICE Headquarters in Washington, District of Columbia I have been employed
17 with ICE since its inception on March 1, 2003. Prior to the establishment of ICE, I
18 was employed by the Office of Detention and Removal Operations (“DRO”), U.S.
19 Immigration and Naturalization Service (“INS”), since April 1996.

20 2. CMD provides policy and oversight for the administrative custody of
21 ICE detainees, one of the most highly transient and diverse populations of any
22 correctional or detention system in the world. CMD manages ICE detention
23 operations efficiently and effectively to provide for the safety, security, and care of
24 all individuals in its custody. CMD is comprised of the Detention Management
25 Division (“DMD”), Alternatives to Detention Division (“ATDD”), and Custody
26 Programs Division (“CPD”).

27 3. Prior to coming to CMD, I served in various positions within the
28 agency as a District Adjudications Officer (“DAO”), Deportation Officer (“DO”),

1 Program Manager (“PM”), Detention and Deportation Officer (“DDO”), and
2 SDDO. Since 2000, I have been appointed to several supervisory positions at
3 legacy INS and ICE Headquarters and have provided general oversight to staff,
4 ERO field offices, senior leadership, and other federal agencies in the
5 implementation and administration of various detention regulations, policies and
6 programs.

7 4. From January 2011 to August 2020, I served as the Deputy Assistant
8 Director (“DAD”) for DMD. As the DAD, I ~~was~~ oversaw the Detention Standards
9 Compliance Unit (“DSCU”), Detention Monitoring Unit (“DMU”), and Detention
10 Planning and Acquisitions Unit (“DPAU”).

11 5. Through a robust inspections program, the DSCU ensures detention
12 facilities used to detain aliens in immigration proceedings or awaiting removal to
13 their countries do so in accordance with ICE national detention standards, and
14 ensures that detainees are housed in the least restrictive environment consistent
15 with the safety and security of the detainees and orderly facility operations. The
16 DSCU oversees ICE’s third-party facility inspections contract and the Detention
17 Management Compliance Program (“DMCP”) for all ICE authorized detention
18 facilities. ICE contract inspectors typically spend three to four days auditing each
19 facility.

20 6. The DMU operates ERO’s on-site detention monitoring program,
21 which consists of over 40 federal detention service managers that monitor
22 detention conditions and day-to-day operations at 57 key facilities through daily
23 compliance reviews and “on the spot” resolution of detainee issues and concerns.
24 On-site monitoring increases facility transparency, reduces the length of time
25 required to implement corrective actions, and provides leadership regular reporting
26 on facility issues that occur between or are not identified during annual inspections
27 or formal reviews.

28 7. The DPAU is responsible for policy and planning at the national level

1 as it relates to bed space capacity and ICE's average daily detention population.
2 DPAU coordinates national detention-related requirements with input from ERO
3 field offices, senior leadership and other agency stakeholders, and then works with
4 the ICE Office of Acquisition Management to develop and post requirements
5 aligned with the overarching goals of immigration detention. These collaborative
6 efforts result in the acquisition of safe and secure detention facilities that can
7 comply with ICE detention standards at a fair and reasonable cost to the
8 government.

9 **II. Standards Applicable to Nationwide HUSP Class**

10 8. I am familiar with the ICE 2011 Performance-Based National
11 Detention Standards ("PBNDS"), released in February 2012 and most recently
12 revised December 2016 to ensure the PBNDS 2011 remains consistent with federal
13 legal and regulatory requirements, as well as with prior ICE policies and policy
14 statements. PBNDS 2011 is the governing set of ICE detention standards at the 11
15 GEO facilities cited in the Nationwide HUSP class.

16 9. I am familiar with PBNDS 2011 (5.8) *Voluntary Work Program*,
17 which establishes ICE requirements, as well as expected practices and outcomes,
18 for service providers that make a voluntary work program available to ICE
19 detainees. ICE requires GEO to adhere to (5.8) *Voluntary Work Program* when
20 operating the program at these facilities.

21 **III. Voluntary Work Program and Personal Housekeeping**

22 10. (5.8) *Voluntary Work Program* provides the framework for ICE
23 detainees housed in PBNDS 2011 facilities to work and earn money while in
24 custody, subject to the number of work opportunities available and within the
25 constraints of the safety, security and good order of the facility. Where possible,
26 service providers should provide detainees the opportunity to participate in a
27 voluntary work program because the negative impact of detention can be reduced
28 through decreased idleness, increased opportunity for social interaction, improved

1 morale and fewer disciplinary incidents.

2 11. On March 6, 2017, the DHS Office of Inspector General (“OIG”) did
3 issue (*OIG-17-43-MA*), *Management Alert on Issues Requiring Immediate Action*
4 *at the Theo Lacy Facility in Orange, California*. During an unannounced
5 inspection, the Theo Lacy Facility in Orange, California, which was operated by
6 the Orange County Sheriff’s Department (“OCSD”) and required to comply with
7 the PBNDS 2008, was found to have problems with food handling, lack of
8 cleanliness in shower stalls and detainee cells in two modular housing units, as
9 well as concerns related to detainee classification, segregation and grievances. The
10 OIG recommended that ICE ensure that OCSD follows the U.S. Department of
11 Agriculture safe food handling guidelines to prevent health risks to detainees;
12 undertake a full review and inspection of Theo Lacy and OCSD management to
13 ensure compliance to PBNDS 2008; and also develop a comprehensive oversight
14 plan to ensure OCSD’s long-term compliance with the intent of PBNDS 2008.
15 ICE concurred with the three recommendations. ICE did not address or provide
16 comments related to the following statement found on page 6 of the report:
17 “Additionally, requiring detainees to clean common areas used by all detainees is
18 in violation of ICE standards, as detainees are only required to clean their
19 immediate living area.”

20 12. Section V(C) of (5.8) *Voluntary Work Program*, Personal
21 Housekeeping Required, states “Work assignments are voluntary; however, all
22 detainees are responsible for personal housekeeping. *Detainees are required to*
23 *maintain their immediate living areas in a neat and orderly manner by: (1) making*
24 *their bunk beds daily; (2) stacking loose papers; (3) keeping the floor free of*
25 *debris and dividers free of clutter; and (4) refraining from hanging/draping*
26 *clothing, pictures, keepsakes, or other objects from beds, overhead lighting fixtures*
27 *or other furniture.*” [The italicized language is in the PBNDS text. Procedures in
28 italics are required for service processing centers (“SPCs”) and contract detention

1 facilities (“CDFs”). IGSA may adopt, adapt or establish alternatives to the
2 italicized procedures, provided they meet or exceed the intent represented by those
3 procedures.]

4 13. Section V(C) is not intended by ICE to be an exhaustive list of facility
5 scenarios in which a detainee may be expected to participate in housekeeping. I
6 was a participating member of the ICE working group that drafted the PBNDS
7 2011. A primary reason for including a “personal housekeeping” section in a
8 detention standard on voluntary work program, rather than in a detention standard
9 on environmental health and safety, was to emphasize that irrespective of whether
10 a detainee chooses to join a work program, all detainees must participate in
11 personal housekeeping and maintaining clean and orderly living areas. Section
12 V(C) provides examples of personal housekeeping, but there was no intent by the
13 working group to establish a conclusive list of personal housekeeping activities or
14 to preclude detainees from participating in maintaining the cleanliness of common
15 or shared living areas.

16 **IV. Immediate versus Shared Living Area**

17 14. The PBNDS 2011 does not define “immediate living area,” nor does it
18 speak to shared living areas or detainee common areas in a facility. Based on my
19 participation in the PBNDS 2011 working group and my overall familiarity with
20 the ICE detention standards, as well as discussion with ERO subject matter experts
21 who drafted ICE’s first set of national detention standards issued in 2000, I believe
22 this to be an oversight or inadvertent omission within the standards that would
23 benefit greatly from clarification. Clarification of the meaning of a component of
24 the ICE detention standards is accomplished by a published Change Notice to a
25 standard.

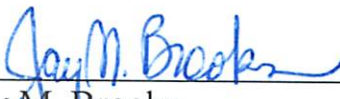
26 15. I am not aware of any component of the ICE detention standards that
27 exempts or expressly forbids detainees from performing basic housekeeping and
28 light cleaning. It is an expectation accepted in most group living environments.

1 The ICE detention standards are silent as to how group-living cleaning gets done;
2 however, the ICE National Detainee Handbook (April 2016), in its Question and
3 Answer ("QA") section on Voluntary Work Program (page 12), states the
4 following, in part: "Will I get paid for keeping my living area clean? No. You must
5 keep areas that you use clean, including your living area and any general-use areas
6 that you use. If you do not keep your areas clean, you may be disciplined. It is up
7 to you to know the rules for the work program. Also see your facility's local rules."

8 16. The ICE Detainee Handbook, which is provided to each detainee as
9 part of orientation, is clear that all detainees, including those not participating in a
10 Voluntary Work Program, are expected to participate in keeping general-use or
11 detainee common areas clean and orderly. Additionally, Section V(A)(3) of
12 PBNDS 2011 (1.2) *Environmental Health and Safety*, General Housekeeping,
13 states, in part, "The facility administrator shall ensure that staff and detainees
14 maintain a high standard of facility sanitation and general cleanliness. When
15 possible, the use of non-toxic cleaning supplies is recommended." Everyone living
16 in a group housing unit shares a co-responsibility to keep the dormitory, dayroom,
17 shower and bathroom areas tidy and clean. Cleaning of recreation areas, dining
18 rooms, multi-purpose rooms that are subject to facility-wide use are different and
19 are not expected to be cleaned by detainees, unless part of a signed voluntary work
20 agreement that offers compensation.

21 V. Signature

22 I declare under penalty of perjury that the foregoing is true and correct.
23 Executed this 22nd day of September, 2020, in Washington, District of Columbia.

24
25 
26 Jay M. Brooks
27 Enforcement and Removal Operations
28 U.S. Immigration and Customs Enforcement