



Pregnant Women in Immigration Detention

Fiscal Year 2020, Semiannual 2

February 16, 2022

Fiscal Year 2020 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

February 16, 2022

I am pleased to present the following report, “Pregnant Women in Immigration Detention” for the second half of Fiscal Year (FY) 2020, which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to direction in Senate Report 116-125, which accompanies the FY 2020 Department of Homeland Security Appropriations Act (P.L. 116-93).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

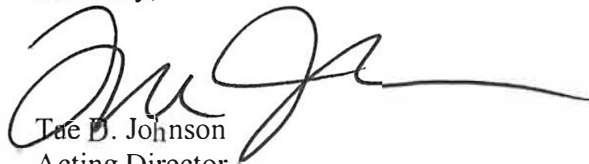
The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to the ICE Office of Congressional Relations at (202) 732-4200.

Sincerely,



Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement



Executive Summary

Senate Report 116-125 requests semiannual reports on pregnant women in ICE custody. This report provides an overview of the circumstances surrounding ICE detention of pregnant women, as well as associated statistics. The data provided in this report are for the second half of FY 2020 (April 1, 2020, through September 30, 2020).



Pregnant Women in Immigration Detention Fiscal Year 2020, Semiannual 2

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I. Legislative Requirement

This report was compiled in response to legislative direction in Senate Report 116-125, which accompanies the Fiscal Year (FY) 2020 Department of Homeland Security Appropriations Act (P.L. 116-93).

Senate Report 116-125 states:

The Committee notes that ICE has ended the presumption of release, absent extraordinary circumstances, for pregnant women apprehended by or transferred to ICE. The Committee directs ICE to conduct a weekly review of all pregnant and postpartum women who remain in detention. Additionally, the Committee directs ICE to provide semiannual reports on the total number of pregnant women in ICE custody, including detailed justification of the circumstances warranting each pregnant detainee's continued detention and the length of her detention. These anonymized reports should be made publicly available on the ICE website.

II. Background

U.S. Immigration and Customs Enforcement (ICE) has demonstrated its commitment to an immigration detention system that prioritizes the health, safety, and welfare of individuals in ICE custody. ICE Enforcement and Removal Operations (ERO) detention standards establish uniform policies and procedures for the safe, secure, and humane treatment of foreign nationals in ICE custody, including pregnant detainees.

Pregnant Detainees in ICE Custody

On December 14, 2017, ICE implemented ICE Directive 11032.3, *Identification and Monitoring of Pregnant Detainees*, which requires identifying and providing appropriate care for pregnant detainees in ICE custody and allows ICE officers and agents to exercise discretion on a case-by-case basis when determining whether to arrest or detain a pregnant individual. Although this directive since has been superseded by ICE Directive 11032.4, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*, effective July 1, 2021, for the time period covered by this report (April 1, 2020, through September 30, 2020), ICE Directive 11032.3 was in effect.

1. Pregnant Detainee Custody Determinations

When an individual enters ICE custody, ICE makes a custody determination based on a variety of factors. ICE is required statutorily to detain noncitizens subject to mandatory detention¹, and otherwise has limited release discretion when a case is determined to be a flight risk or a danger to the community. These considerations apply to all individuals in ICE custody, to include pregnant detainees. For pregnant detainees who are not subject to mandatory detention, ICE regularly exercises prosecutorial discretion when making custody decisions and considers each case individually, making a final decision due to the cumulative facts of each case. When determining whether to exercise prosecutorial discretion, consideration is given to criminal and immigration history, as well as to humanitarian factors. Accordingly, ICE's custody determinations for those who are pregnant account for factors including medical considerations related to pregnancy; ties to the community; prior convictions, including violent crimes; the provision of sufficient identity documents; and a final order of removal or history of violating the terms of orders of supervision. These considerations are not exhaustive, and no one factor is determinative.

ICE further notes that pregnant detainees in their third trimester generally are exempted from ICE detention unless it is required legally or necessary for removal, and only when such removal has been cleared by medical professionals. Please note that ICE follows medical advice in all cases involving pregnant detainees. As a result, the numbers of pregnant detainees in ICE custody are typically low, and the population length of stay in detention is much shorter when compared to that of the general population. For example, as of September 30, 2020, the average length of stay (ALOS) for pregnant detainees in ICE custody was 54.6 days, compared to the

¹ 236(c) of the Immigration and Nationality Act (INA).

ALOS for ICE's general population, which was 84.8 days. However, ICE does not exempt or exclude from enforcement efforts any class or category of individuals, including pregnant detainees, and, in certain instances, detention is necessary or required.

2. Treatment of Pregnant Detainees in ICE Custody

ICE ensures that all detainees receive appropriate medical care, which may include transfers to facilities better situated to meet the specific medical needs of the noncitizen in custody. In addition to the medical, mental health, and dental services provided to every detained individual as required by ICE detention standards, every facility directly or contractually provides pregnant detainees in ICE custody with pregnancy services, including pregnancy testing, counseling and assistance, routine or specialized pre-natal care, postpartum follow-up, and lactation services.

Within 12 hours of arrival, during their initial medical screening, detainees receive information on services related to women's healthcare as required in ICE's detention standards. If the initial medical intake screening indicates the possibility of pregnancy, a referral is initiated and the detainee receives a health assessment as soon as appropriate or within 2 working days. All initial health assessments of detainees are conducted by a trained and qualified health provider. The evaluation includes a request for information about several factors, including pregnancy testing for eligible detainees aged 18-56 and documented results; if the detainee currently is nursing (breastfeeding); use of contraception; reproductive history (number of pregnancies, number of live births, number of spontaneous/elective abortions, pregnancy complications, etc.); menstrual cycle; history of breast or gynecological problems; family history of breast and gynecological problems; and any history of physical or sexual victimization and when the incident occurred. A pubic and breast exam, pap test, baseline mammography, and sexually transmitted disease testing is offered and provided as deemed appropriate by the medical provider.

Upon confirmation by medical personnel that a detainee is pregnant, the detainee is given close medical supervision. Pregnant detainees have access to prenatal and specialized care, and comprehensive counseling inclusive of, but not limited to nutrition, exercise, complications of pregnancy, prenatal vitamins, labor and delivery, postpartum care, lactation, family planning, pregnancy termination services, and parental skills education. Additionally, the facility administrator notifies the local ICE ERO Field Office Director as soon as practicable of any detainee determined to be pregnant, but no later than 72 hours after such determination for the completion of a custody review, as appropriate. The medical provider identifies any special needs (e.g., diet, housing, or other accommodations) and informs all necessary custody staff and facility authorities. If a pregnant detainee has been identified as high-risk, the detainee is referred, as appropriate, to a physician specializing in high-risk pregnancies. ICE Health Services Corps (IHSC) tracks all pregnant detainees in custody and provides weekly updates to ERO headquarters and field office leadership.

III. Data Report

ICE tracks information on detainees’ health conditions, including pregnancy, to provide necessary health services to those in its custody. As a result, a detainee’s pregnancy is not captured in ICE’s regular case reporting system and, to report information about this population, ICE also must analyze medical recordkeeping systems. ICE can provide the data contained in the following charts for the reporting period of April 1, 2020, through September 30, 2020.

**ICE Initial Book-Ins on ICE IHSC Pregnant Detainees List by Month and Criminality
FY 2020 – Second Half²**

Month	Convicted Criminal	Pending Criminal Charges	Other Immigration Violator	Total
April	2	-	5	7
May	-	2	2	4
June	-	1	5	6
July	-	1	5	6
August	-	1	6	7
September	-	-	7	7
Total	2	5	30	37

The following tables denote the ALOS for both the general population and the pregnant detainee population. The ALOS for the general detained population differs from the ALOS of pregnant detainees in ICE custody. Pregnant detainees in custody are usually in detention very briefly and are detained due to being subject to mandatory detention or because of their criminal histories.

The following tables represent the ALOS of the general ICE population and pregnant detainees for the second half of FY 2020. In FY 2020, the ALOS for pregnant detainees, on average, was 30 days less than the ALOS for the general ICE detained population, which was 85 days.

² End-of-FY 2020 ICE Initial Book-Ins data are historic and static. Data are filtered from April 1, 2020, through September 30, 2020. ICE detention data exclude Office of Refugee Resettlement (ORR) transfers/facilities, as well as U.S. Marshals Service prisoners. An individual can be booked into ICE custody or removed several times. The individual’s latest ICE Initial Book-In and ICE Removal are reported. ICE IHSC provided a list of pregnant detainees who were detained from October 1, 2019, through September 30, 2020.

**ALOS for the ICE General Population and Pregnant Detainees by Month in FY 2020 –
Second Half**

Month³	General Population ALOS	Pregnant Detainees ALOS
April	73.8	56.4
May	80.9	57.0
June	91.0	43.8
July	88.8	70.3
August	88.7	12.4
September	91.5	67.7
Average	84.8⁴	54.6⁵

The following table provides a snapshot of pregnant individuals in mandatory and nonmandatory detention by criminality on October 2, 2020.

Noncitizens on IHSC Pregnant Detainees List by Detention Type⁶

Detention Type	Convicted Criminal	Pending Criminal Charges	Other Immigration Violator	Total
Mandatory	-	-	8	8
Nonmandatory	-	3	2	5
Total	-	3	10	13

³ FY 2020 ICE ALOS data are historic and static. Data are filtered from April 1, 2020, through September 30, 2020. ICE Detention data exclude ORR transfers/facilities, as well as U.S. Marshals Service prisoners.

⁴ The ALOS for this 6-month period is the average of each individual in custody during that period.

⁵ The ALOS length of stay for this 6-month period is the average of each pregnant detainee in custody during that period.

⁶ FY 2020 ICE National Docket data are a snapshot as of October 2, 2020. ICE detention data exclude ORR transfers/facilities, as well as U.S. Marshals Service prisoners. The mandatory detention reporting methodology includes all noncitizens that meet any of the below mandatory detention criteria: Final Order: Aliens with final orders of removal; INA 236(c): Aliens charged under specific sections of INA 212 or 237; Expedited Removal: Aliens processed under Expedited Removal case category, aligns to INA section 235; and Mandatory Case Category: Aliens with a current Case Category that is subject to Mandatory Detention. Final order is based on whether the detained individual has a final order in the most recent Removal Case information.

IV. Conclusion

ICE ERO oversees the civil immigration detention of one of the most highly fluid and diverse populations in the United States. ICE remains committed to prioritizing the health, safety, and welfare of detainees in its custody, including pregnant detainees. In particular, ICE continues to take all necessary measures to ensure that pregnant detainees in its custody are identified as soon as possible and that their needs are addressed following medical advice in all cases.

Appendix: Abbreviations

Abbreviation	Definition
ALOS	Average Length of Stay
ERO	Enforcement and Removal Operations
FY	Fiscal Year
ICE	U.S. Immigration and Customs Enforcement
IHSC	ICE Health Service Corps
INA	Immigration and Nationality Act
ORR	Office of Refugee Resettlement