



Pregnant Women in Immigration Detention

Fiscal Year 2021, Semiannual 1

March 14, 2022

Fiscal Year 2021 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

I am pleased to present the following report, “Pregnant Women in Immigration Detention” for the first half of Fiscal Year (FY) 2021, which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to direction in the Joint Explanatory Statement, which accompanies the FY 2021 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-260).

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

The Joint Explanatory Statement accompanying the FY 2021 DHS Appropriations Act (P.L. 116-260) requests semiannual reports on pregnant women in ICE custody. This report provides an overview of the circumstances surrounding ICE detention of pregnant or lactating women in ICE custody as well as associated statistics. The data provided in this report are for the first half of FY 2021 (October 1, 2020, through March 31, 2021).



Pregnant Women in Immigration Detention Fiscal Year 2021, Semiannual 1

Table of Contents

I. Legislative Requirement	1
II. Background	2
III. Data Report	4
IV. Conclusion	7
Appendix: Abbreviations	8

I. Legislative Requirement

This report was compiled in response to direction in the Joint Explanatory Statement, which accompanies the Fiscal Year (FY) 2021 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-260).

The Joint Explanatory Statement states:

Pregnant Women.—ICE is directed to provide semiannual reports on the total number of pregnant or lactating women in ICE custody, including detailed justification of the circumstances warranting each such detainee's continued detention and the length of detention. These anonymized reports shall be made publicly available on the ICE website.

II. Background

U.S. Immigration and Customs Enforcement (ICE) is committed to ensuring the health, safety, and welfare of people 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 individuals.

Pregnant Individuals 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 individuals 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 was 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 (October 1, 2020, through March 31, 2021), ICE Directive 11032.3 was in effect.

Pregnant Individuals' 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 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 ICE detained individuals, to include pregnant individuals. For pregnant individuals 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 based on 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 consider factors such as medical issues related to pregnancy; ties to the community; prior convictions, including violent crimes; provision of sufficient identity documents; and a final order of removal or history of violating 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 is necessary for removal, and only when such removal is 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 the general population. For example, as of March 31, 2021, the average length of stay (ALOS) for pregnant detainees in ICE custody was 11.53 days, compared to the ALOS for ICE's general population, which was 80.91 days.² However, ICE does not exempt or exclude

¹ Section 236(c) of the Immigration and Nationality Act

² Refer to ALOS charts under Section III of the report.

from enforcement efforts any class or category of individuals, including pregnant individuals, and, in certain instances, detention is necessary.

Treatment of Pregnant Detainees in ICE Custody

ICE ensures that all detainees receive timely and 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 medical, mental health, and dental services provided to every detained individual as required by ICE detention standards, every facility directly or contractually provides eligible individuals with pregnancy services, including pregnancy testing, counseling and assistance, routine or specialized prenatal care, postpartum follow-up, and lactation services.

Within 12 hours of arrival, during initial medical screening, all eligible individuals receive information on services related to women's healthcare as required by ICE's detention standards. If an initial medical intake screening indicates the possibility of pregnancy, referral is initiated, and the detained individual receives a health assessment within 2 working days. All initial health assessments are conducted by a trained and qualified health provider. The evaluation requests information about several factors, including pregnancy testing for detained individuals aged 18-56 and documented results; if the detained individual 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 pelvic and breast exam, pap test, baseline mammography, and sexually transmitted disease testing are offered and provided 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 individual determined to be pregnant, but not later than 72 hours after such determination for the completion of a custody review. 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 individual is referred to a physician specializing in high-risk pregnancies. The ICE Health Service Corps (IHSC) tracks all pregnant individuals 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. To report information about this population, ICE analyzes the medical recordkeeping systems. In the following charts, ICE provides data showing detained individuals at ICE facilities for the reporting period of October 1, 2020, through March 31, 2021. The following data indicates ICE’s initial book-ins of pregnant detainees in ICE facilities, presented by month and criminality for the first half of FY 2021.

**ICE Initial Book-Ins on Pregnant Detainees List by Month and Criminality
FY 2021-First Half³**

Month	Convicted Criminal	Pending Criminal Charges	Other Immigration Violator	Total
October	1	1	9	11
November	-	1	6	7
December	1	2	10	13
January	-	1	14	15
February	-	1	10	11
March	-	1	24	25
Total	2	7	73	82

³ FY 2021 year-to-date (YTD) Initial Book-In data are current through March 31, 2021. ICE Detention data exclude U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) transfers/facilities, as well as U.S. Marshals Service (USMS) prisoners. IHSC provided a list of pregnant noncitizens who were detained from October 1, 2020, through March 31, 2021.

The following chart denotes the ALOS for both general and pregnant populations in ICE facilities for the first half of FY 2021. The ALOS for pregnant individuals in ICE custody, on average was 11.53 days, which is significantly lower than the ALOS for the general ICE-detained population (80.91 days).

The data below indicate the number of pregnant individuals released by ICE for the first half of FY 2021.

**ICE Initial Book-Ins on Pregnant Detainees List by Release Reason
FY 2021 - First Half⁴**

Release Reason	Total
Bonded Out - Immigration Judge	2
Order of Recognizance	31
Order of Recognizance - Humanitarian	10
Order of Supervision	2
Order of Supervision - Humanitarian	1
Paroled	16
Paroled - Humanitarian	4
Removed	1
Title 42 Returned	14
USMS	1
Total	82

⁴ FY 2021 YTD Initial Book-In data are current through March 31, 2021. ICE Detention data exclude HHS ORR transfers/facilities, as well as USMS prisoners. A noncitizen may have multiple releases; only the most recent release is included in this report. IHSC provided a list of pregnant noncitizens who were detained from October 1, 2020, through March 31, 2021.

**ALOS for the ICE General Population and by Month
FY 2021 - First Half⁵**

Month	General Population ALOS	Pregnant Individuals' ALOS
October	86.48	14.30
November	84.64	26.38
December	80.44	8.07
January	72.96	9.64
February	71.21	8.64
March	85.23	9.29
Average	80.91	11.53

⁵ FY 2021 YTD ICE ALOS data are filtered through March 31, 2021. ICE detention data exclude ORR transfers/facilities, as well as USMS prisoners.

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 people in its custody, including pregnant individuals. 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
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
FY	Fiscal Year
HHS	U.S. Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
IHSC	ICE Health Service Corps
ORR	Office of Refugee Resettlement
USMS	U.S. Marshals Service
YTD	Year-to-Date