



Pregnant Women in Immigration Detention

Fiscal Year 2020, Semiannual 1

August 4, 2021

Fiscal Year 2020 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

August 4, 2021

I am pleased to present the following report, “Pregnant Women in Immigration Detention” for the first 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 me at (202) 732-3000.

Sincerely,

A handwritten signature in black ink, appearing to read "Tae D. Johnson". The signature is fluid and cursive, with a large initial "T" and "J".

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 first half of FY 2020 (October 1, 2019, through March 31, 2020).



Pregnant Women in Immigration Detention Fiscal Year 2020, Semiannual 1

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I. Legislative Language

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) 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 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.

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 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 detainees, to include pregnant females. 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 on the basis of 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 take into account factors such as 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 women 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 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 is much shorter when compared to that of the general population. For example, as of March 31, 2020, the average length of stay (ALOS) for pregnant detainees in ICE custody was 22 days, compared to the ALOS for ICE's general population, which was 55 days².

2. Treatment of Pregnant Detainees in ICE Custody

¹ 236(c) of the Immigration and Nationality Act

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

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 accordance with ICE Performance-Based National Detention Standards (PBNDS) 2011³, upon arrival to ICE Health Services Corps (IHSC)-staffed facilities, all female detainees 18 to 56 years old (or any females, regardless of age, who are menstruating) are given urine pregnancy tests as a part of the initial health screening. At non-IHSC-staffed facilities, pregnancy tests are administered as part of the detainee's initial health assessment when indicated by the detainee's age or condition, or if requested by the detainee. When a pregnant detainee is identified, the information is entered into the detainee's health record and appropriate medical care is provided. Pregnant detainees have access to pregnancy services, including pregnancy testing, routine or specialized prenatal care, comprehensive counseling and assistance, postpartum follow-up, lactation services, and pregnancy termination. Additionally, local ICE ERO Field Office leadership is notified of any pregnant detainee to complete a custody review as appropriate. IHSC tracks all pregnant women in custody and provides weekly updates to ERO headquarters and field office leadership.

³ ICE Performance-Based National Detention Standards, Medical Care (Women) Section 4.4, V.B. 2.a.

III. Data Report

ICE tracks information on detainee health conditions, including pregnancy, in order to provide necessary health services to those in its custody. In order to report information about this population, ICE analyzes the medical recordkeeping systems. In the following charts, ICE provides data showing detainees at ICE facilities for the reporting period of October 1, 2019, through March 31, 2020. The data below indicate ICE’s initial book-ins of pregnant detainees in ICE facilities, presented by month, criminality, and release reason for the first half of FY 2020.

**ICE Initial Book-Ins on Pregnant Detainee List by Month and Criminality
FY 2020 - First Half**

Month	Convicted Criminal	Pending Criminal Charges	Other Immigration Violator	Total
October	3	1	52	56
November	1	3	47	51
December	3	8	94	105
January	3	2	57	62
February	4	1	39	44
March	1	2	24	27
Total	15	17	313	345

**ICE Initial Book-Ins on Pregnant Detainee List by Release Reason
FY 2020 - First Half**

Release Reason	Total
Bonded Out - Field Office	1
Bonded Out – Immigration Judge (IJ)	21
Order of Recognizance	39
Order of Recognizance - Humanitarian	15
Order of Supervision	13
Order of Supervision - Humanitarian	6
Paroled	106
Paroled - Fear Found	8
Paroled - Humanitarian	45
Processing Disposition Changed Locally	2
Relief Granted by IJ	1
Removed	82
Transferred	1
U.S. Marshals or Other Agency	1
No Release Reason	4
Total	345

The following charts denote the ALOS for both the general population and the pregnant detainee population in ICE facilities for the first half of FY 2020. The ALOS for pregnant detainees in ICE custody, on average, was 33 days fewer than the ALOS for the general ICE-detained population, which was 55 days.

**ALOS for the ICE General Population by Month
FY 2020 - First Half⁴**

Month	ALOS
October	55.2
November	55.7
December	54.7
January	57.1
February	56.1
March	51.0
Average	55.0

**ALOS for Pregnant Detainees Listed by Month
FY 2020 - First Half⁵**

Month	ALOS
October	12.2
November	19.3
December	12.7
January	21.7
February	28.9
March	33.4
Average	21.4

⁴ FY 2020 YTD ICE ALOS data are filtered through March 31, 2020. ICE detention data exclude ORR transfers/facilities, as well as U.S. Marshals Service prisoners.

⁵ FY 2020 YTD ICE ALOS data are filtered through March 31, 2020. ICE detention data exclude ORR transfers/facilities, as well as U.S. Marshals Service prisoners. IHSC provided a list of pregnant noncitizens who were detained from October 1, 2019, through March 31, 2020.

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 detainees. In particular, ICE continues to take all necessary measures to ensure that pregnant women 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 Services Corps
IJ	Immigration Judge
ORR	Office of Refugee Resettlement
PBND	Performance-Based National Detention Standards
YTD	Year-to-Date