



Improving Access to Reproductive Health Care for Women in Immigration Detention

Currently, we are witnessing the extended detention of increasing numbers of women, including those who are pregnant, nursing, and sole caretakers of their families. For medical reasons, to preserve family unity, and for other humanitarian reasons, the vast majority of these women should not be detained. In the interim, until alternatives to detention are arranged, ICE must provide women in immigration detention with a comprehensive range of reproductive health services and options. Unfortunately, recent reports document a disturbing patchwork of incomplete or inaccessible health services for female detainees. Such findings confirm the urgent need to specifically address the health and rights of women in ICE custody.

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Women in ICE custody need timely reproductive and obstetrical health care.

- Survivors of sexual assault need immediate assessment and treatment to minimize medical and psychological trauma, to provide prophylactic treatment, emergency contraception, and follow-up for sexually transmitted diseases.
- Many women need pregnancy testing and, if pregnant, nondirective options counseling and health services in accordance with their expressed desires, whether they plan to carry to term or to terminate a pregnancy.
- Over the course of their pregnancies, women will need ongoing prenatal care, specialized obstetrical care for high-risk pregnancies or complications, safe and timely access to a birthing center or hospital for labor and delivery, and post-partum and nursing services with a focus on maintaining unity between the mother and child.
- Women who choose to terminate their pregnancies need access to a health provider for abortion care.
- During extended detention, women will need preventive care, including pelvic and breast examinations, Pap tests, and mammograms.

ICE is constitutionally obligated to provide access to these services in a timely manner, consistent with the professional standard of care.

- It is well established that under the Fifth Amendment, immigration detainees have a constitutional right to receive necessary medical care and to be free of unsafe and punitive conditions.
- Authoritative professional standards, including those from the American Public Health Association and the American College of Obstetricians and Gynecologists, recommend a comprehensive range of reproductive services for women in custody and oppose the shackling of pregnant women.
- Consistent with these constitutional requirements and professional standards, ICE must adequately address women's unique health needs, including gynecological, reproductive, and obstetrical health care.

- The use of physical restraints on pregnant women, particularly when they are in labor, delivery and post-partum recovery, is dangerous to their health and lives and inconsistent with the Fifth Amendment right to be free from inhumane treatment.
- Court after court has held that the right to decide whether to continue or terminate a pregnancy is not lost as a condition of confinement. Under the Fifth Amendment, ICE is obligated to ensure that women in immigration detention can access abortion services.

ICE policies fall below constitutional and other federal standards.

- The 2008 ICE/DRO Performance Based National Detention Standards (PBNDS) for medical care, currently under review, do not address critical reproductive health needs such as emergency contraception, freedom from restraints during labor and delivery, and access to abortion services.
- ICE policies and practices addressing reproductive and obstetrical care afford less protection for the health and rights of women in the custody of ICE than of those women in the custody of the Federal Bureau of Prisons (BOP).

ICE should immediately implement the recommendations below to redress the current inadequacies in care.

- To ensure compliance with minimum constitutional standards, ICE must comprehensively address the full range of women’s unique health needs, including those outlined above, through *effective and enforceable* policies.
- To immediately remedy current deficiencies, and reach basic parity with other federal policies, ICE should immediately:
 - implement policies and practices that are no less protective than BOP policies regarding birth control, pregnancy, and abortion, *see* 28 C.F.R. §§ 551.21 to 23 and Program Statement 6070.05; and,
 - implement policies and practices that ensure pregnant detainees are not shackled in violation of the BOP Post Order effective October 31, 2007.
- To ensure that all pregnant immigrant detainees are able to access the medical care they require, ICE should provide medical care in a linguistically and culturally appropriate manner.

Congress should pass the Immigration Oversight and Fairness Act of 2009, legislation that would codify humane and enforceable detention standards.

- H.R. 1215, Immigration Oversight and Fairness Act of 2009, sponsored by Rep. Roybal-Allard, would provide basic protections for all immigration detainees, including women. The bill provides for access to medical care, phones, legal materials, and law libraries. It also ensures protections for unaccompanied children, sexual abuse victims, survivors of torture, families with children, and other vulnerable populations.

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