



June 20, 2025

SENT VIA EMAIL (ICE-FOIA@dhs.gov):

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009

Re: FOIA Request Related to ICE Detention and Treatment of Pregnant, Postpartum, and Lactating Persons

Dear Freedom of Information Officer:

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA) submitted on behalf of the Women's Refugee Commission (WRC) (Requester). The Requester also requests a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 6 C.F.R. § 5.5(d) and 5 U.S.C. § 552(a)(6)(E). The justifications for the fee waiver and expedited processing are set out in detail following the request.

THE REQUESTER

The Women's Refugee Commission (WRC) was founded in 1985 as a non-governmental, non-profit organization that works to identify gaps, research solutions, and advocate for change to improve the lives of migrant and displaced women and children. WRC is a leading expert on the needs of refugee women and children, and the policies that can protect and empower them. For more than two decades, WRC's Migrant Rights and Justice program has monitored immigration detention facilities and migrant children's facilities operated by Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the Office of Refugee Resettlement (ORR). It has conducted extensive research and published numerous reports on the conditions of migrant women and migrant children in federal immigration custody, including reporting about the policies, practices, and conditions of custody.

REQUEST FOR INFORMATION

Requester seeks any and all records¹ that were prepared, received, transmitted, collected and/or maintained by the U.S. Immigration and Customs Enforcement (ICE) that describe, refer or relate to

¹ The term "records" as used herein includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers

policies, guidelines, or procedures regarding the identification, detention and treatment of pregnant, postpartum, and nursing persons in ICE detention.² We request the specified records below from January 20, 2025 to the present (unless otherwise noted). Additionally, please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this FOIA request should also be considered within the request's scope.

Where available, we request that records responsive to this request be produced in the original electronic format with all metadata and load files. We ask that any records produced in PDF, TIFF, or other image formats be produced in full, uncompressed form; please do not compress images or downsample the resolution, as this interferes with their legibility. In every table, database, spreadsheet, list or other data compilation produced, the agency should produce anonymous unique identifiers corresponding to each subject ID and Alien File Number, and, separately, to the ID fields for each officer and supervisor involved. To facilitate a speedy response, we ask that records responsive to this request be produced on a rolling basis.

For purposes of this request, the document referenced herein is defined as follows:

“2021 Pregnancy Directive” means the Policy Directive issued by U.S. Immigration and Customs Enforcement entitled “Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals” (Directive 11032.4, issue date July 1, 2021). For reference, the 2021 Pregnancy Directive is attached as Exhibit A.

Specific records requested:

1. Any and all records stored or maintained by IHSC “regarding all individuals known to be pregnant, postpartum, and nursing detained in ICE custody” as noted in Section 2.2 of the 2021 Pregnancy Directive including, but not limited to, any and all data that can be exported in electronic form in spreadsheet format (e.g., *.XLSX or *.CSV formats).
2. Any and all records relating to or embodying any amendments, modifications, additions, deletions, or other changes to the 2021 Pregnancy Directive.
3. Any and all records including communications such as grievances and requests received by ICE from persons in ICE detention relating to pregnancy, postpartum, and lactation including medical and custody concerns related to pregnancy, postpartum, and lactating individuals.
4. Any updates, amendments and attachments to IHSC Policy No. 04-02 “Women’s Medical Care”, and any and all other IHSC policies regarding the provision of medical care to women in ICE custody. This includes all versions of such policy that were in effect during the request period.
5. Any updates, amendments and attachments to ICE Policy No. 11020.1: “Use of GPS Monitoring Devices on Persons who are Pregnant or Diagnosed with a Severe Medical Condition (Sept. 14, 2009).

and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² This includes detention by ICE in any of the following settings: Service Processing Centers, Contract Detention Facilities, Family Residential Facilities, Intergovernmental Service Agreement (IGSA) Facilities, Dedicated Intergovernmental Service Agreement (DIGSA) Facilities, Intergovernmental Agreement (IGA) Facilities, and any other facilities where individuals may be held in ICE custody for 72 hours or more.

6. From Fiscal Year 2025 to the date this request is fulfilled, any databases, spreadsheets, lists, and other data compilations reflecting the following:
 - a. The total number of individuals ICE has identified as pregnant while in ICE detention, broken down by month and detention facility;
 - b. The total number of incidents of miscarriages and live births in ICE detention broken down by detention facility;
 - c. For each person identified as pregnant, postpartum, and lactating in ICE detention, the following data:
 - i. The total time period they remained in ICE detention, including the initial date of detention, date of release and any transfers between detention facilities;
 - ii. For each person released from ICE detention, information indicating whether the person was released on a grant of parole, bond, recognizance, an order of supervision, and/or placed into an ICE alternative to detention program;
 - iii. For each person who departed from the United States directly from ICE detention, information indicating whether the person departed on an order of voluntary departure, an expedited order of removal, reinstatement of prior removal order, final administrative removal order, or an order of removal entered by an Immigration Judge;
 - iv. Information indicating whether and the number of times each person was transferred to an external medical facility such as a hospital, emergency room or other medical care facility for medical care or treatment associated with the pregnancy and the date of such transfer.

FEE WAIVER

Requester asks for a total waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k).³

The detention and treatment of pregnant, postpartum, and nursing women in federal immigration custody is of great concern to the public. The Government Accountability Office (GAO) found that between 2016 and 2018, ICE detained pregnant women more than 4,600 times,⁴ capturing a sustained increase in the detention of pregnant women that generated significant public interest and concern.⁵ The requesting organization together with various partner groups submitted a

³ In the alternative, Requester asks for a limitation on fees pursuant to 6 C.F.R. § 5.11(d).

⁴ United States Government Accountability Office, Immigration Detention: Care of Pregnant Women in DHS Facilities (Mar. 24, 2020), available at <https://www.gao.gov/products/gao-20-330#:~:text=What%20GAO%20Found,percent%20resulting%20from%20CBP%20arrests.>

⁵ *See, e.g.* Abigail Abrams, *ICE Will Now Detain Pregnant Women Because of President Trump’s Executive Order*, Time, Mar. 30, 2018, available at <http://time.com/5221737/ice-detain-pregnant-immigrants-donald-trump/>; Alan Gomez, *ICE to*

complaint to the Department of Homeland Security Office of Inspector General and Office for Civil Rights and Civil Liberties⁶ in September 2017, asking them to investigate ICE's treatment of pregnant women in its custody.⁷ The complaint highlighted the cases of ten women who reported being ignored and denied adequate medical care even in emergencies such as pain, bleeding and, in some instances, miscarriage. Many of the women detained by the Department of Homeland Security are survivors of abuse seeking protection in the United States. These reports underscore durable concerns about the risks to health and safety of pregnant women in custody as well as the decisions made by the federal government to detain them.

Pregnant, postpartum, and lactating women are a highly vulnerable group in the detention system. They face considerable stress including the inability to access necessary medical care and support, separation from family and the uncertainty of immigration proceedings. Medical experts recognize that the "conditions in DHS facilities are not appropriate for pregnant women or children."⁸ Although the 2021 Pregnancy Directive heralded significant decreases in the detention of pregnant, postpartum, and lactating women in ensuing years,⁹ recent policy changes including requiring ICE director approval for releases,¹⁰ the effective closure of the DHS Office for Civil Rights and Civil Liberties and the Office of the Immigration Detention Ombudsman,¹¹ significant actual¹² and exponential planned¹³ increases in the ICE detention population, and

Hold More Pregnant Women in Immigration Detention, USA Today, Mar. 30, 2018, available at <https://www.usatoday.com/story/news/nation/2018/03/29/ice-hold-more-pregnant-women-immigration-detention/469907002/>; Elise Foley & Roque Planas, *ICE Ends Policy of Presuming Release For Pregnant Detainees*, Huff Post, Mar. 29, 2018, available at https://www.huffingtonpost.com/entry/immigration-customs-enforcement-pregnant-women_us_5abd07d7e4b03e2a5c7a4262; Rafael Bernal, *ICE Will Detain Pregnant Women, Ending Previous Policy*, The Hill, Mar. 29, 2018, available at <http://thehill.com/latino/380827-ice-will-detain-pregnant-women-ending-previous-policy>.

⁶ Requester notes with grave concern the effective closure of the Office for Civil Rights and Civil Liberties by DHS through its March 2025 Reduction in Force actions, leaving pregnant, postpartum, and lactating persons in detention without a critical avenue for recourse. See Ellen Gilmer, "Trump aides shutter Homeland Security civil rights office," Bloomberg Government (Mar. 21, 2025), available at <https://news.bgov.com/bloomberg-government-news/civil-rights-advocates-brace-for-cuts-in-homeland-security-unit>.

⁷ Increasing Numbers of Pregnant Women Facing Harm in Detention, Administrative Complaint filed with Office for Civil Rights and Civil Liberties, and the Office of the Inspector General, September 26, 2017, available at <https://www.womensrefugeecommission.org/rights/resources/1524-joint-complaint-ice-detention-treatment-of-pregnant-women>.

⁸ Letter from American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American Academy of Family Physicians to ICE Opposing Inhumane Detention Policies for Pregnant Women, March 29, 2018, available at http://www.aiala.org/infonet/medic-professionals-against-ice-detention-policies?utm_source=aiala.org&utm_medium=InfoNet%20Search.

⁹ See U.S. Immigration and Customs Enforcement, Pregnant, Postpartum, and Lactating Individuals in Immigration Detention, Fiscal Year 2024 Report to Congress Semiannual 1 (Aug. 2, 2024), available at https://www.dhs.gov/sites/default/files/2024-09/0802_2024_ice_pregnant_postpartum_and_lactating_individuals_in_immigration_detention_semiannual_1.pdf.

¹⁰ Adam Shaw, "Trump's ICE limits illegal immigrant releases amid moves to shake off Biden 'hangover'," Fox News Digital (Feb. 6, 2025) available at <https://www.foxnews.com/politics/trumps-ice-limits-illegal-immigrant-releases-amid-moves-shake-off-biden-hangover>.

¹¹ See n.6, *supra*; see also Zolan Kanno-Youngs et al, "Trump shuts down 3 watchdog agencies overseeing immigration crackdown," N.Y. Times (Mar. 21, 2025), available at <https://www.nytimes.com/2025/03/21/us/politics/trump-civil-rights-homeland-security-deportations.html>.

¹² See, e.g., Douglas MacMillan, "Immigrants forced to sleep on floors at overwhelmed ICE detention centers," Wash. Post (Apr. 20, 2025), available at <https://www.washingtonpost.com/business/2025/04/18/immigrant-detention-overcrowding-trump-crackdown/>.

¹³ See, e.g., Allison McCann et al, "Trump administration aims to spend \$45 billion to expand immigrant detention," N.Y. Times (Apr. 7, 2025), available at <https://www.nytimes.com/2025/04/07/us/politics/trump-administration-immigrant->

Customs and Border Protection’s rescission of several care and custody policies applicable to pregnant, postpartum, and lactating women¹⁴ augur potential changes in this trend. These changes alone will leave pregnant, postpartum, and lactating women vulnerable to longer detention and deteriorating conditions to the detriment of their fundamental health and safety and that of their families and communities.

We also note that ICE has not published its semiannual report to Congress on pregnant, postpartum, and lactating individuals in immigration detention since the semiannual report covering the first half of Fiscal Year 2024 in August 2024.¹⁵ As a result, the public is unable to ascertain whether the reduction in the number of pregnant, postpartum or lactating women being detained or the minor increase in average length of stay has continued.

The Requester is not filing this Request to further a commercial interest. The requesting organization is a 501(c)(3) nonprofit organization with the ability to widely disseminate the requested information through a variety of sources including reports, backgrounders, news briefings, guides, and other materials that are disseminated to the public. These materials are widely available to the public at no cost through a variety of sources including the organization’s website, blogs and social media sites.

Specifically, the requesting organization has a longstanding practice of disseminating information obtained through FOIA to further the public’s understanding of immigration laws and policy. In October 2017, the Women’s Refugee Commission published a report on the detention of immigrant women in ICE custody, analyzing data obtained from ICE through FOIA to show the number of and shift in the detention of women in ICE custody over time.¹⁶

Thus, a fee waiver would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters” (internal quotation marks omitted)). *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers”) (internal quotation marks and citation omitted)).

EXPEDITED PROCESSING

We request Track 1 expedited treatment for this FOIA request, which qualifies for expedited treatment pursuant to 6 C.F.R. § 5.5(e) and 5 U.S.C. § 552(a)(6)(E). There exists a clear “urgency to inform the public concerning actual or alleged Federal Government activity,” and

[detention-facilities-services.html](#); see also The President’s FY26 Discretionary Budget Request, available at <https://www.whitehouse.gov/omb/information-resources/budget/the-presidents-fy-2026-discretionary-budget-request/>.

¹⁴ Memorandum, Pete Flores, Acting Commissioner, U.S. Customs and Border Protection, “Rescission of Legacy Policies Related to Care and Custody,” May 5, 2025, available at https://www.cbp.gov/sites/default/files/2025-05/intc-45073_-_ac1_signed_distribution_memo_5.5.25.pdf.

¹⁵ See *supra* n. 9; see also U.S. Immigration and Customs Enforcement, Pregnant, Postpartum, and Lactating Individuals in Immigration Detention, Fiscal Year 2023 Report to Congress Semiannual 2 (Jan. 18, 2024), available at https://www.dhs.gov/sites/default/files/2024-03/2024_0118_ice_pregnant_postpartum_and_lactating_individuals_in_immigration_detention_fy23_semiannual_2.pdf.

¹⁶ Women’s Refugee Commission, *Prison for Survivors: The Detention of Women Seeking Asylum in the United States* (2017), available at <https://www.womensrefugeecommission.org/rights/resources/1528-prison-for-survivors-women-in-us-detention-oct2017>.

the Requester is “primarily engaged in dissemination of information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii) (expedited processing is warranted where there is “[a]n urgency to inform the public about an actual or alleged federal government activity.”).

As set forth in the numerous cites *supra* in the fee waiver section, the treatment of pregnant, postpartum, and nursing persons in ICE custody is a matter of widespread media and public interest, and the requested records will inform the public concern of this activity by ICE. 5 U.S.C. § 552(a)(6)(E)(i)(I). The urgency to inform the public goes beyond the general public interest in government transparency—it responds to ongoing serious concerns from Congress and the public, and will answer specific questions that have very recently been raised regarding the impact on pregnant, postpartum, and lactating women of ICE’s decisions to severely curtail releases from detention by requiring director approval and to increase its detention population beyond its facility capacity. The records will also respond to urgent concerns arising from: (1) DHS’s decision to effectively eliminate the two main avenues for pregnant, postpartum and lactating persons to seek recourse for conditions or detention decisions threatening their health and safety in its effective closure of the Office for Civil Rights and Civil Liberties and Office of the Immigration Detention Ombudsman; and (2) CBP’s rescission of critical policies protecting the basic health and safety of medically at-risk and pregnant and postpartum individuals and infants in custody.

The Requester is primarily engaged in the dissemination of information. As described *supra*, our organization produces reports, news briefings, educational backgrounders and guides, and other materials that are distributed to the public. As mentioned *supra*, the requesting organization will likely distribute the information obtained through this FOIA request through these as well as other means available to us.

Furthermore, there is a “compelling need” for expedited processing. 5 U.S.C. § 52(a)(6)(E)(i)(I). Denial of expedited disclosure of records revealing information about detention and treatment of pregnant, postpartum, and nursing women could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(d)(1)(i).

As noted *supra*, our organization documented many cases in which pregnant women were not receiving adequate medical care and suffered extreme physical and mental harm. Some women experienced miscarriages while in DHS custody. Delay in the disclosure of information about the treatment of pregnant, postpartum, and lactating persons in ICE custody could prevent abuses from coming to light and being corrected, thereby increasing the chances of avoidable injuries or even deaths in the future.

Pursuant to 6 C.F.R. § 5.5(d)(3), the undersigned certifies that the information provided above as the basis for requesting expedited processing is true to the best of their knowledge and belief.

* * *

Thank you for your consideration of this request. If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a

decision to withhold any information or deny a waiver of fees. We expect your reply to this Request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please provide all responsive records to:

Zain Lakhani,
Director, Migrant Rights and Justice
Women's Refugee Commission
1012 14th Street NW, Suite 1100
Washington, DC 20005

Thank you for your attention to this request.

Sincerely,



ZAIN LAKHANI
WOMEN'S REFUGEE COMMISSION
1012 14th Street NW, Suite 1100
Washington, DC 20005
Tel: (202) 492-4451
zainl@wrcommission.org

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 11032.4: Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals

Issue Date: July 1, 2021
Effective Date: July 1, 2021
Superseded: *ICE Directive 11032.3 Identification and Monitoring of Pregnant Detainees* (December 17, 2017)
ICE Policy 10070.1: Discretion for Nursing Mothers (November 7, 2007)

Federal Enterprise Architecture Number: 403-256-001

1. **Purpose/Background.** This Directive sets forth policy and procedures to ensure individuals known to be pregnant, postpartum, or nursing in U.S. Immigration and Customs Enforcement (ICE) custody are effectively identified, monitored, tracked, and housed in an appropriate facility to manage their care. This Directive builds upon existing ICE policy and procedures and complements ICE's national detention standards, family residential standards, and ICE Health Service Corps (IHSC) policies.
2. **Policy.** Generally, ICE should not detain, arrest, or take into custody for an administrative violation of the immigration laws individuals known to be pregnant, postpartum, or nursing unless release is prohibited by law or exceptional circumstances exist.¹ ICE officers and agents should carefully weigh the decision to issue a detainer, arrest, or take into custody for an administrative violation of the immigration laws an individual who is known to be pregnant, postpartum, or nursing. This Directive does not address whether removal proceedings should be initiated (i.e., the issuance of a charging document) against such individuals. Such decisions should be made in accordance with U.S. Department of Homeland Security and ICE enforcement priorities and applicable guidance. The decision whether to detain should be made separately from the decision whether to initiate removal proceedings or take any other immigration enforcement actions. In the very limited circumstances in which detention is necessary and appropriate, ICE must monitor individuals known to be pregnant, postpartum, or nursing detained in ICE custody for general health and well-being, including regular custody and medical reevaluation, to ensure appropriate pre- and/or post-natal and other medical and mental health care. ICE must ensure that individuals known to be pregnant, postpartum, or nursing are housed in facilities suitable for their medical and mental health needs.
- 2.1 **Identification.** All ICE law enforcement personnel must notify their Enforcement and Removal Operations (ERO) Field Office Directors (FODs) or Homeland Security Investigations (HSI) Special Agents in Charge (SACs) before they issue a detainer or arrest an individual known to be pregnant, postpartum, or nursing, unless exceptional

¹ This general prohibition does not limit temporary placements into family staging centers.

circumstances exist. Only the FOD, or designee not below the Assistant Field Office Director (AFOD) level, may approve the detention of individuals known to be pregnant, postpartum, or nursing.

Any and all available, credible information should be consulted to determine if an individual is pregnant, postpartum, or nursing. If available, ICE law enforcement personnel should review jail discharge summaries and other information from any prior custodial entity, as well as affirmatively inquiring with regard to pregnancy-related status during interviews.

There may also be times when ICE identifies pregnant, postpartum, or nursing individuals who are already detained in ICE custody. When that occurs, ICE personnel, through the appropriate chain of command, must immediately notify the FOD, or designee, and the appropriate medical staff (e.g., Field Medical Coordinator (FMC) or Health Services Administrator (HSA)) to determine if continued detention is appropriate.

- 2.2. **IHSC Monitoring.** IHSC must maintain information regarding all individuals known to be pregnant, postpartum, and nursing detained in ICE custody, based on information received from the ERO field offices, IHSC HSAs, IHSC FMCs, or other designated personnel. IHSC must provide ongoing monitoring, tracking, and communication with the ERO field offices concerning the medical condition of individuals known to be pregnant, postpartum, or nursing. Data on individuals known to be pregnant, postpartum, or nursing must be reported monthly to the Executive Associate Director (EAD) for ERO, who will report it to the Office of the Director (through the Office of the Deputy Director).
- 2.3. **Use of Restraints.** ICE personnel and contractors must adhere to the following restrictions regarding the use of restraints for individuals who are pregnant or in post-delivery recuperation. This general prohibition on restraints applies to all pregnant individuals in the custody of ICE, whether during transport, in a detention facility, or at an outside medical facility.
 - 1) Restraints should not be considered as an option for pregnant individuals, except under the following extraordinary circumstances:
 - a. A medical officer has directed the use of restraints for medical reasons;
 - b. Credible, reasonable grounds exist to believe the individual presents an immediate and serious threat of hurting themselves, staff, or others; or
 - c. Reasonable grounds exist to believe the individual presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method.
 - 2) Restraints are never permitted on individuals who are in active labor or delivery;

- 3) In the rare event that one of the above situations applies, medical staff must determine the safest method and duration for the use of restraints and the least restrictive restraints necessary must be used. Even in the extraordinary circumstance when restraints are deemed necessary, no individual known to be pregnant may be restrained in a face-down position with four-point restraints, on their back, or in a restraint belt that constricts the area of the pregnancy. All attempts will be made to ensure that the individual is placed on their left side if immobilized.
 - 4) The use of restraints requires documented approval and guidance from a medical authority. Record-keeping and reporting requirements regarding the medical approval to use restraints must be documented in the individual's A-file and noted in the system of record.
3. **Definitions.** The following definitions apply for the purposes of this Directive only.
- 3.1. **Headquarters Responsible Officials (HROs).** EADs of ERO, HSI, and Management and Administration (M&A); the Associate Director of the Office of Professional Responsibility (OPR); and the Assistant Directors, Officers, or equivalent positions who report directly to the Director, Deputy Director, or Chief of Staff.
 - 3.2. **Field Responsible Official (FRO).** The highest-ranking official in any ICE field location. This includes SACs, FODs, and any other officials who have been designated in writing by the Director.
 - 3.3. **ICE Personnel.** All ICE employees and contractors, designated immigration officers, and warrant service officers.
 - 3.4. **Exceptional Circumstances** exist only in the following circumstances: (1) the individual poses national security concerns; or (2) the individual poses an imminent risk of death, violence, or physical harm to any individual.
 - 3.5. **Nursing** is, regardless of the passage of time since childbirth, the act of an individual breastfeeding a child.
 - 3.6. The **Postpartum** period includes a one-year period immediately after an individual gives birth to their child.
4. **Responsibilities.**
- 4.1. **HROs** are responsible for:
 - 1) Ensuring overall compliance with this Directive within their respective Directorate or Program Office; and

- 2) Developing and issuing any necessary implementation guidance specific to their Directorate or Program Office, in coordination with the ICE Office of Policy and Planning.

4.2. FROs are responsible for:

- 1) Ensuring ICE personnel notify FROs before an individual known to be pregnant, postpartum, or nursing is issued a detainer or arrested, unless exceptional circumstance exist;
- 2) Ensuring ICE personnel notify the FROs as soon as practicable, but generally within two hours, if a detainer or arrest is made of an individual known to be pregnant, postpartum, or nursing without prior FRO approval;
- 3) Ensuring that ICE personnel review all applicable information and proactively inquire of individuals apprehended by ICE or who are in ICE custody, whether they are pregnant, postpartum, or nursing;
- 4) Ensuring ICE personnel notify FROs as soon as practicable, but generally within 24 hours, for individuals already detained in ICE custody who are identified as pregnant, postpartum, or nursing;
- 5) Approving detention for individuals known to be pregnant, postpartum, or nursing;
- 6) Ensuring a process is in place for FROs to request concurrence with a decision to detain from the ERO Executive Associate Director for individuals known to be pregnant, postpartum, or nursing. This process must include a method to ensure IHSC confirms any detention location can provide appropriate care for individuals known to be pregnant, postpartum, or nursing;
- 7) Ensuring local IHSC, or appropriate medical staff in non-IHSC staffed facilities, have a process in place to notify the FRO as soon as practicable, but generally within 24 hours, after an individual in custody is determined to be pregnant, postpartum, or nursing;
- 8) Notifying the FMC or HSA as soon as practicable, but generally within 24 hours of learning an individual detained in ICE custody is pregnant, postpartum, or nursing;
- 9) Ensuring a process is in place for the expeditious release, where legally authorized, of individuals known to be pregnant, postpartum, or nursing already detained in ICE custody;
- 10) Verifying that unless release is prohibited by law or exceptional circumstances exist, individuals known to be pregnant, postpartum, or nursing are not detained;

- 11) Approving the detention, unless release is prohibited by law or exceptional circumstances exist, of individuals known to be pregnant, postpartum, or nursing and re-evaluating the decision at least weekly;
- 12) Ensuring all facilities in which ICE detains noncitizens are aware of ICE's expectations regarding individuals known to be pregnant, postpartum, or nursing under this Directive;
- 13) Ensuring individuals known to be pregnant, postpartum, or nursing receive appropriate medical and mental health care, including effectuating transfers to appropriate facilities; and
- 14) Monitoring, in coordination with IHSC and facility medical staff, the condition of individuals known to be pregnant, postpartum, or nursing.

4.3. IHSC Personnel are responsible for:

- 1) Notifying the FOD and IHSC Headquarters (HQ), as soon as practicable, but no later than 24 hours, after identification of individuals known to be pregnant, postpartum, or nursing in custody;
- 2) Maintaining medical and mental health information regarding all individuals known to be pregnant, postpartum, or nursing in ICE custody;
- 3) Monitoring, in coordination with the FOD, the condition of individuals known to be pregnant, postpartum, or nursing, including but not limited to the term of the pregnancy, general health, to include the mental health, of the pregnant, postpartum, or nursing individual, and medical condition of the fetus, and communicating with the FRO about any specific risk factors or concerns;
- 4) Overseeing and reviewing facility capabilities to determine if they are appropriate for the detention of individuals known to be pregnant, postpartum, or nursing and recommending to the FOD when pregnant, postpartum, or nursing individuals' transfers to another facility is necessary for appropriate medical or mental health care;
- 5) Advising the FOD without delay if IHSC is unable to identify an appropriate detention location to provide appropriate prenatal, medical, and mental health care for individuals known to be pregnant, postpartum, or nursing;
- 6) Regularly re-evaluating individuals known to be pregnant, postpartum, or nursing to inform the FOD whether continued detention is appropriate as part of the ongoing general health and well-being review to ensure pregnant, postpartum, or nursing individuals receive appropriate pre- and post-natal care; and
- 7) Tracking, monitoring, and reporting all individuals known to be pregnant,

postpartum, or nursing detained in ICE custody and communicating with the FOD, or designee, concerning the medical condition of individuals known to be pregnant, postpartum, or nursing and reporting that information, at least monthly, to the ERO EAD, who will report it to the Office of the Director (through the Office of the Deputy Director).

4.4. Executive Associate Director for ERO is responsible for:

- 1) Reviewing and reporting information regarding individuals known to be pregnant, postpartum, or nursing in ICE custody to the Office of the Director (through the Office of the Deputy Director).

4.5. ICE Personnel, where appropriate, are responsible for:

- 1) Ensuring that, unless release is prohibited by law or exceptional circumstances exist, individuals known to be pregnant, postpartum, or nursing are not detained;
- 2) Requesting approval from the SAC or FOD through their chain of command before issuing a detainer or arresting individuals known to be pregnant, postpartum, or nursing;
- 3) Requesting approval from the FOD through their chain of command before detaining individuals known to be pregnant, postpartum, or nursing in ICE custody;
- 4) Notifying the SAC or FOD through their chain of command as soon as practicable, but generally within 2 hours, when pregnant, postpartum, or nursing individuals are arrested without prior approval;
- 5) Providing appropriate case, location, and status information to assist IHSC with tracking and monitoring individuals known to be pregnant, postpartum, or nursing detained in ICE custody;
- 6) Complying with all applicable ICE policies related to the use of restraints for pregnant individuals; and
- 7) Ensuring that any individuals known to be pregnant, postpartum, or nursing enrolled in an Alternatives to Detention (ATD) program are not required to wear a radio frequency or global positioning system monitor.

5. Procedures/Requirements.

- 5.1. Apprehension, Detention, and Release.** FODs will ensure, unless release is prohibited by law or exceptional circumstances exist, individuals known to be pregnant, postpartum, or nursing are generally not detained or, if already detained, are generally released from

detention.² Only the FOD may approve the detention of known pregnant, postpartum, or nursing individuals.

Any decision to issue a detainer or arrest an individual known to be pregnant, postpartum, or nursing must be approved by the appropriate FOD. Where HSI personnel intend to issue a detainer or make a civil arrest of an individual known to be pregnant, postpartum, or nursing, the decision must be approved by the SAC who must first consult with the applicable FOD.

In deciding whether release is prohibited by law for individuals known to be pregnant, postpartum, or nursing, the FOD must consult with local OPLA, as well as IHSC to advise on whether detention is medically advisable, in order to make an informed custody determination. If the FOD, or designee not below the AFOD level, determines ATD enrollment is an appropriate condition of release, individuals known to be pregnant, postpartum, or nursing will not be placed on a form of ATD that requires a radio frequency or global positioning system monitor be worn.

5.2. Notification Procedures.

- 1) **IHSC facilities.** In detention facilities staffed by IHSC, the HSA must notify the FOD of any individual housed at the facility who is determined to be pregnant, postpartum, or nursing as soon as practicable, generally within 24 hours.
- 2) **Non-IHSC facilities.** In facilities not staffed by IHSC, the FOD, in coordination with the FMC, or other designated medical personnel, will ensure notification is conducted by facility custody personnel and/or medical staff of any individual housed at the facility who is determined to be pregnant, postpartum, or nursing, but no later than 24 hours after such determination.
- 3) **IHSC HQ.** Upon receipt of notification of pregnant, postpartum, or nursing individuals from detention facility personnel, ICE personnel, or any other source, the IHSC HSAs, FMCs, or other designated IHSC personnel in the area of responsibility, will immediately notify the FOD and IHSC HQ, in writing, of the individual's pregnancy, postpartum status, or that they are nursing.

5.3. Medical and Mental Health Needs of Individuals Known to Be Pregnant, Postpartum, or Nursing. Upon receipt of information that individuals detained in ICE detention are pregnant, postpartum, or nursing, IHSC will assess the detention facility's ability to meet the medical or mental health needs of individuals known to be pregnant,

² The Immigration and Nationality Act limits the discretion of ICE to release from custody certain categories of noncitizens under certain circumstances. See INA §§ 235(b) (noncitizens in the expedited removal process); 236(c) (certain criminal and terrorist noncitizens during pending removal proceedings); 241(a)(2) (certain criminal and terrorist noncitizens during the 90-day removal period). ICE personnel should consult with the Office of the Principal Legal Advisor (OPLA), to the extent possible before assuming custody of an individual known to be pregnant, postpartum, or nursing to determine the applicability of these provisions to such individuals and any available legal release mechanisms.

postpartum, or nursing. IHSC will immediately report its conclusion as soon as practicable, generally but within 24 hours to the FOD and, if appropriate, suggest an alternate facility for transfer and treatment. If IHSC determines that no available facility can provide appropriate medical or mental health care in a particular case, IHSC will notify the FOD.

At all times, IHSC will monitor and track the medical condition of individuals known to be pregnant, postpartum, or nursing while in ICE detention. Designated IHSC personnel (e.g., HSAs, FMCs) will provide updates to IHSC HQ and the FOD, or designee, at least weekly. HSAs, FMCs, and other designated IHSC personnel must report major changes in pregnant, postpartum, or nursing individuals' health, medical, or mental health condition to the FOD, or designee, and IHSC HQ within 24 hours of observance.

- 5.4. **Re-evaluating Custody Status.** At least weekly, FODs, or their designee not below the AFOD level, will evaluate whether continued detention is appropriate and required for individuals known to be pregnant, postpartum, or nursing, in consultation with IHSC HQ and OPLA. Pregnant individuals who remain in custody during their third trimester of pregnancy will be reviewed based on controlling IHSC policies and procedures.³
- 5.5. **Centralized Tracking of Pregnant, Postpartum, or Nursing Individuals.** In coordination with ERO field offices and ERO HQ offices, IHSC HQ will collect and maintain relevant data and information received from FROs, HSAs, FMCs, and other designated personnel regarding individuals known to be pregnant, postpartum, or nursing. IHSC HQ will develop a system for maintaining this information in a manner that permits continuous monitoring and tracking of individuals known to be pregnant, postpartum, or nursing in ICE detention. Data on individuals known to be pregnant, postpartum, or nursing will be reported monthly to the ERO EAD, who will report it to the Office of the Director (through the Office of the Deputy Director).
6. **Recordkeeping.** All relevant documents produced and/or received in accordance with this Directive must be maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records Schedule (GRS) or a NARA-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.
7. **Authorities/References.**
 - 7.1. Immigration and Nationality Act §§ 212(d)(5), 235(b), 236, and 241.
 - 7.2. 8 C.F.R. §§ 1.1(q), 212.1 - 212.5, 235.3, 236.1 - 236.2(b), 241.1 - 241.3.
 - 7.3. 2000 National Detention Standards for Non-Dedicated Facilities.

³ See, e.g., IHSC Directive: 04-02 ERO, Women's Health Services.

- 7.4. 2008 Performance-Based National Detention Standards.
- 7.5. 2011 Performance-Based National Detention Standards, revised Dec. 2016.
- 7.6. 2019 National Detention Standards for Non-Dedicated Facilities.
- 7.7. 2020 Family Residential Standards.
- 7.8. IHSC Directive: 04-02 ERO, Women's Health Services.
- 7.9. ICE Policy No. 11020.1: *Use of GPS Monitoring Devices on Persons who are Pregnant or Diagnosed with a Severe Medical Condition* (Sept. 14, 2009), or as updated.
- 8. **Attachments.** None.
- 9. **No Private Right.** This Directive provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



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