



Pregnant, Postpartum, and Lactating Individuals in Immigration Detention

Fiscal Year 2022, Semiannual 2

December 23, 2022

Fiscal Year 2022 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

December 23, 2022

I am pleased to present the following report, “Pregnant, Postpartum and Lactating Women in Immigration Detention,” for the second half of Fiscal Year (FY) 2022, 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 2022 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-103).

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,

A handwritten signature in blue ink, appearing to read "Tae D. Johnson". The signature is fluid and cursive, extending to the right.

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

Executive Summary

The Joint Explanatory Statement accompanying the FY 2022 DHS Appropriations Act (P.L. 117-103) requests semiannual reports on pregnant, postpartum, and lactating women in ICE custody. This report provides an overview of circumstances surrounding the ICE detention of pregnant, postpartum, or lactating women in ICE custody as well as associated statistics. The data provided in this report is for the second half of FY 2022 (April 1, 2022, through September 30, 2022).



Pregnant, Postpartum, and Lactating Women in Immigration Detention Fiscal Year 2022, Semiannual 2

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I. Legislative Requirement

This report was compiled in response to direction in the Joint Explanatory Statement, which accompanies the Fiscal Year (FY) 2022 Department of Homeland Security Appropriations Act (P.L. 117-103).

The Joint Explanatory Statement states:

Pregnant, Postpartum, and Lactating Women. —ICE is directed to provide semiannual reports on the total number of pregnant, postpartum, and 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, postpartum¹, and nursing² individuals.

Pregnant Individuals in ICE Custody

On July 1, 2021, ICE implemented ICE Directive 11032.4, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*, which states that ICE will not detain, arrest, or take into custody individuals known to be pregnant, postpartum, or nursing unless release is prohibited by law or exceptional circumstances exist. In the very limited circumstances in which detention is necessary and appropriate, this directive requires identifying and monitoring those individuals for general health and wellbeing, including regular custody and medical reevaluation to ensure that appropriate prenatal and/or postnatal and other medical and mental health care are provided and that housing in facilities is suitable for their medical and mental health needs. At least weekly, ICE will evaluate whether continued detention is appropriate and required for individuals known to be pregnant, postpartum, or nursing, allowing ICE officers and agents to exercise discretion on a case-by-case basis when determining whether the individual will remain detained.

Pregnant, Postpartum, or Lactating Individuals' Custody Determinations

When an individual enters ICE custody, ICE makes a custody determination based on a variety of factors. ICE is bound to detain individuals subject to mandatory detention as set by U.S. immigration laws and has limited 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 known health and humanitarian factors. Accordingly, ICE's custody determinations consider factors such as medical issues related to pregnancy, including postpartum or nursing status; ties to the community; prior convictions, including violent crimes; 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 individuals in their third trimester generally are exempted from ICE detention unless it is legally required or is necessary for removal, and only when such

¹ Postpartum period includes a 1-year period immediately after an individual gives birth to a child.

² Nursing is, regardless of the passage of time since childbirth, the act of an individual breastfeeding a child. The terms 'nursing' and 'breastfeeding' within this report are used interchangeably to refer to lactating individuals.

removal was cleared by medical professionals. ICE follows medical advice in all cases involving pregnant individuals. As a result, the numbers of pregnant individuals 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 September 30, 2022, the average length of stay (ALOS) for pregnant individuals in ICE custody was 8.7 days, compared to the ALOS for ICE's general population, which was 28.6 days.³

Treatment of Pregnant, Postpartum, or Lactating Individuals in ICE Custody

ICE strives to ensure that all detained individuals 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 detained individuals 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, lactation services, and access to pregnancy termination services.

Within 12 hours of arrival, during their initial medical screening, individuals receive information on services related to women's health care as required in ICE's detention standards. If initial medical intake screening indicates the possibility of pregnancy, a referral is initiated to an ICE Health Service Corps (IHSC) physician or advanced practice provider.⁴ The individual receives a health assessment as soon as practicable but generally within 24 hours after an individual in custody is determined to be pregnant, postpartum, or nursing. All initial health assessments are conducted by a trained and qualified health provider. The evaluation requests information on several factors, including pregnancy testing for eligible 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 or gynecological problems; and any history of physical or sexual victimization and when the incident occurred. A pelvic and breast exam, Papanicolaou test, baseline mammography, and sexually transmitted disease testing are offered and provided by the medical provider.

Upon confirmation by medical personnel that an individual is pregnant, the individual is provided close medical supervision. Pregnant individuals 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 who has been determined to be pregnant, but not later than 24 hours after such determination is made, 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 individual is identified as high-risk, the individual is referred to a physician specializing in high-risk pregnancies. IHSC tracks

³ Refer to ALOS charts under Section III of the report.

⁴ Advanced practice providers are nurse practitioners, physician assistants, and board-certified clinical pharmacists.

all pregnant individuals in custody and provides monthly updates to ICE ERO Headquarters and field office leadership.

III. Data Report

ICE tracks information on detained noncitizens’ health conditions, including pregnancy, postpartum or nursing, to provide necessary health services to those in its custody. To report information about this population, ICE analyzes medical recordkeeping systems. In the following charts, ICE provides data showing detained individuals at ICE facilities for the reporting period of April 1, 2022, through September 30, 2022. The following data indicate ICE’s initial book-ins of pregnant, postpartum, and nursing individuals in ICE facilities, presented by month and criminality, and the number that were released, presented by the reason for release for the second half of FY 2022.

**ICE Initial Book-Ins on Pregnant, Postpartum, and Breastfeeding Individuals
List by Month and Criminality⁵
FY 2022 - Second Half**

Month	Convicted Criminal	Pending Criminal Charges	Other Immigration Violator	Total
April	1	-	31	32
May	1	1	42	44
June	-	1	24	25
July	1	-	24	25
August	-	1	34	35
September	-	-	24	24
Total	3	3	179	185

⁵ Starting in FY 2018, ICE defines immigration violators’ criminality in the following manner: Convicted Criminal: Immigration Violators with a criminal conviction entered into ICE system of record at the time of the enforcement action; Pending Criminal Charges: Immigration Violators with pending criminal charges entered into ICE system of record at the time of the enforcement action; or Other Immigration Violators: Immigration Violators without any known criminal convictions or pending charges entered into ICE system of record at the time of the enforcement action.

The following data indicate the number of pregnant individuals released by ICE for the second half of FY 2022.

**ICE Initial Book-Ins on Pregnant, Postpartum, and Breastfeeding
Individuals List by Release Reason
FY 2022 - Second Half**

Release Reason	Total
Bonded Out - Immigration Judge	0
Order of Recognizance	45
Order of Recognizance - Humanitarian	52
Order of Supervision	1
Order of Supervision - Humanitarian	1
Paroled	71
Paroled - Humanitarian	8
Removed	2
Title 42 Returned	0
U.S. Marshals Service	1
Total	181

The following chart denotes the ALOS for both general and pregnant, postpartum, and nursing populations in ICE facilities for the second half of 2022. The ALOS for pregnant individuals in ICE custody, on average, was 8.7 days, which is significantly lower than the ALOS for the general ICE-detained population (28.6 days).

**ALOS for the ICE General Population and by Month
FY 2022 – Second Half⁶**

Month	General Population ALOS	Pregnant, Postpartum and Breastfeeding ALOS
April	23.75	13.54
May	24.41	7.43
June	28.57	11.00
July	30.54	8.29
August	30.89	6.59
September	33.92	6.85
Average	28.58	8.67

⁶ FY 2022 year-to-date ICE ALOS data are filtered through September 30, 2022. ICE detention data exclude Office of Refugee Resettlement transfers/facilities, as well as U.S. Marshals Service prisoners.

IV. Conclusion

ICE ERO oversees the civil immigration detention of one of the most highly fluid and diverse populations of any detention system in the United States. ICE remains committed to prioritizing the health, safety, and welfare of all people in its custody, including pregnant, postpartum, and lactating individuals. ICE continues to take all necessary measures to ensure that pregnant, postpartum, or lactating individuals 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
ICE	U.S. Immigration and Customs Enforcement
IHSC	ICE Health Service Corps