

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Superseded: *ICE Directive 11032.3 Identification and Monitoring of Pregnant Detainees* (December 17, 2017)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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