NATIONAL IMMIGRATION LAW CENTER

Know Your Rights: Pregnant, Postpartum, and Nursing People Facing Immigration Enforcement

Disclaimer: This resource provides general information for pregnant, postpartum, and nursing people facing immigration detention and enforcement. It is not legal advice specific to your situation. We recommend that community members exercise caution and speak to an experienced immigration lawyer about their individual cases.

What Does the Law Say?

U.S. immigration law allows immigration authorities to detain people who are pregnant, postpartum, and nursing.[1] But people in Immigration and Customs Enforcement (ICE) detention still have rights. ICE does not always respect these rights, but we should all continue to demand that they be honored for the safety and dignity of community members, their children, and their families.

The information provided below is about ICE detention. If you are held at a Customs and Border Protection (CBP) facility, there are different rules and policies since these facilities are meant for short stays (under 72 hours). Unless CBP releases you into the community, CBP will send most pregnant, postpartum, and nursing people to ICE detention from CBP detention.

ICE has the authority to release someone from detention who is pregnant, postpartum, or nursing. For example, if someone is "medically certified as pregnant," federal rules say ICE may release them for "urgent humanitarian reasons" or "significant public benefit." However, you must prove that you are not a danger to the community or that you will show up for future immigration appointments or hearings.

What Are My Rights as a Pregnant, Postpartum, and Nursing Person?

First, there are some definitions to keep in mind:

- Pregnant- this means a medical test confirms you are pregnant.

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[1] *This resource uses the term "pregnant people" and "pregnant person" more frequently than "pregnant women." This is because it's important to recognize the personhood of people who are pregnant. This is also in recognition of the fact that not everyone who becomes pregnant identifies as a woman. In recognition of all of these complexities, we use the terms "pregnant person/people" and "pregnant woman/women" depending on the context and as appropriate.*

- Postpartum- this means that it has been less than one year since you had a baby.
- Nursing- this means anytime that you are feeding your child with your own breastmilk, regardless of how long it has been since they were born. This is also sometimes called "lactating."

Detention/Release

- ICE has a special policy that tells officers when they can detain a pregnant, postpartum, or nursing person. It says that usually, you should not be detained unless there are "exceptional circumstances," or the law requires your arrest and detention. This is sometimes called "mandatory detention."
  - Exceptional circumstances mean that there is something in your background that makes you a threat to the country ("national security threat") or that you might seriously hurt someone else.
- Even if ICE does detain you, their policy also says they must consider at least once a week if you should *continue* to stay detained and that they must keep track of every pregnant, postpartum, or nursing person in their facilities.
- You can ask your immigration officer to release you. With your permission, your friends and family can also send letters of support to the officer handling your case. This request is called a parole application, and you can find a sample here. ICE has been denying these parole applications. This forces many people needing to file something known as a habeas petition (petition for habeas corpus) to get out of detention. Here is more information on habeas.

Medical Care & Labor in ICE Detention

- ICE is supposed to offer all people an initial health screening within 12 hours of coming to an ICE detention facility. This includes a pregnancy test if you are a woman between 18 and 56 years old. Within 14 days of arriving at an ICE detention facility, the medical staff should do a more detailed health screening. You can ask for a second pregnancy test later in your detention, if you have a reason to suspect that you are pregnant.
- ICE is also supposed to detain you at a facility that can meet your medical needs. Some ICE jails have better medical care facilities or are closer to hospitals than others.

- You have the right to medical care that meets the unique needs of your pregnancy. For example, a special diet and prenatal vitamins, sleeping on a lower bunk, extra pillows, and appointments to see specialist doctors. The same is true for postpartum follow-up, nursing accommodations, and abortion care.
- If you are not receiving the care that you need, you should use the facility's message system to send messages to your ICE officer. The facility should give you a handbook in your own language that explains how to request medical care and how to send messages to your ICE officer. This is an example of the National Detainee Handbook but some facilities will give you a separate one with more rules about that facility.
- There is no public information about what should happen if a person goes into active labor in ICE detention. In the Bureau of Prisons (BOP), the government criminal system, the government is supposed to make sure that childbirth takes place at a hospital. Even though there is no specific ICE policy about having your baby in a hospital, ICE detention facilities are required to take you to a community hospital, if medically necessary. As no detention facility is equipped to take care of someone in active labor, ICE should take you to a hospital.
- ICE officers also have a duty to respond to you if you are in medical distress while being arrested, transported, or held in detention. In ICE detention, the guards will not be ICE officers. But, they have their own requirements under work contracts to respond to someone who is bleeding, showing signs of labor, etc.
- Trigger warning: sexual assault.
    - ICE detention facilities are supposed to follow a law known as the Prison Rape Elimination Act (PREA). If you are or a loved one is the victim of sexual abuse in detention, you have a right to report the assault and get help. You can call Freedom for Immigrants' National Immigration Detention Hotline from inside the ICE facility (Dial 9233#). You can also call the ICE Detention Reporting and Information Line (Dial 9116#). The law says ICE cannot punish you for reporting sexual abuse.

Nursing

- ICE detention standards says nursing people should receive "appropriate accommodations." But there is no explanation about what that means. You or your attorney should still advocate for ICE facilities or jails holding you to offer or allow someone to bring to you:
    - A manual or electric breast pump and a private place to pump.

    - A freezer to temporally store your milk and storage bags (or for the facility to allow your friends and/or family to bring storage bags and retrieve them when full).
- Generally, what ICE facilities tend to offer to nursing people is medication to relieve pain caused by being unable to feed their child. Some people have also reported that facility staff offered them medicine to dry up their breastmilk. If you develop an infection from being unable to nurse your child or express milk with a pump, you have the right to demand to be seen by the facility's medical staff.
- ICE jails are also supposed to follow recommendations from a national commission on jails. These recommendations say that people should be able to nurse their infants in the hospital and **should not** be separated prior to discharge from the hospital.

Restraints and Transport

- ICE is not supposed to place wrist or ankle shackles on a pregnant person unless there are "extraordinary" circumstances, meaning some unusual reason for specifically needing to put shackles on you. You can demand ICE not use wrist or ankle shackles and that they follow their own rules and the law. You can ask hospital staff to help you make these demands too.
- ICE is ***never allowed*** to have you in restraints during active labor or delivery. After you have your baby and are recovering, they should not place restraints on you unless there are extraordinary reasons that make using restraints "absolutely necessary."
- ICE is required to have medical personnel review and approve any air travel once you are confirmed to be pregnant. Travel after 36 weeks of pregnancy is not recommended.

Preparing for an ICE Check-In

Because several pregnant, postpartum, and nursing people have been arrested at an ICE check-in or released from detention and told to go to an ICE check-in, in this section, we offer some practical suggestions on how to prepare for these appointments.

What Is the Purpose of an ICE Check-In?

ICE uses the check-in appointment for several different reasons. The main ones are:

- To make sure that you are providing an updated address and not working without permission.
- To put someone on a surveillance program that ICE calls their "alternative to detention program." This usually means ICE puts an ankle monitor or smartwatch on you. There is currently an ICE policy that tells officers to put electronic watches (called "VeriWatch") on pregnant people, and *not* an electronic ankle monitor. A group of lawyers are challenging this policy. You can ask your ICE officer or case manager to have the wristwatch taken off. It is best to do this in writing. We provide a sample basic request here.
    - **Note for medical providers**: People forced to wear the VeriWatch are given a "participant agreement" that states they cannot remove or tamper with the device *except as necessary in an emergency or prior approval.* In a medical emergency where the device is interfering with care, providers should be able to rely on this exception to remove the device. Especially if you try to talk to ICE ahead of removing the device on your own. The participant agreement should have a phone number to call to talk to the ICE officer or case manager.
- To make sure you are working on getting a passport or travel documents or to give them your passport or travel document. This is so that if you get a deportation order, they can quickly deport you.
- To deport someone who has a deportation order.

An ICE check-in is different from a U.S. Citizenship & Immigration Services appointment for fingerprinting or an interview. It is also different from a hearing with the Immigration Court and an Immigration Judge.

What Could Happen at an ICE Check-In?
Generally, one or two things may happen. ICE will let you leave the check-in appointment with a new date to return, or ICE will not let you leave the office. If ICE does not let you leave the office, it is because they have decided to detain you.

If you already have a deportation order, there may be a greater risk that you will not be allowed to leave. Even with a deportation order, talk to an immigration attorney about anything you can file or be ready to file to require ICE to release you or not detain you. For example, an immigration attorney can be ready to file a habeas corpus petition to ask a federal judge to order ICE to release you.

What Documents Should I Bring to My ICE Check-In as a Pregnant, Postpartum, or Nursing Person?

- **Your ICE appointment letter.** ICE calls this either a Call-In Letter (Form G-56) or sometimes your appointment is written on your Order of Recognizance (Form I-220A).
- **Proof that you are pregnant, postpartum, or nursing.** There is no standard "proof" from ICE. It just has to be "credible." This means that it has to be believable or true.
  - If you are pregnant, you could bring**:**
    - A card or letter showing an upcoming medical appointment
    - A sonogram picture with a date
    - A letter from your midwife or doctor confirming your due date
  - If you are postpartum, you could bring:
    - Your child's birth certificate
    - Insurance bills showing the date that you had your baby
    - Your child's medical records showing their date of birth within the last year.
  - If you are nursing, you could bring**:**
    - Your child's medical records stating that they are breastfed
    - Dated medical records from complications from nursing like mastitis
    - Letter from any nursing support groups or providers confirming that you are nursing
    - Proof that you have a breast pump (for example, a receipt for buying one or insurance letters confirming you are eligible for one).
    - **You should never be required to express milk as proof that you are nursing.**

- **If you have any medical complications due to pregnancy or during this postpartum period, bring proof of that too.** These can be physical and mental health complications like postpartum depression or anxiety.[2] A letter from your medical provider is likely the simplest way to cover a lot of information below.

[2] If you are experiencing feelings or thoughts that may be depression or anxiety, the Postpartum Support International has a hotline and text message to get help: https://postpartum.net/get-help/help-for-moms/

But if you cannot get a letter, here are some examples of things to bring to show you require higher level of medical care:

- Bring your medication prescriptions (or empty pill bottles with your name and medication name on the label). Unfortunately, if ICE plans to arrest you, they will take your medication from you.
- Discharge papers from the last time you received medical care or the birth of your baby.
- If you are scheduled for an induction or a c-section, bring anything to show that you have future surgeries or procedures scheduled.

Final Tips on Check-Ins and ICE Detention

- **You have a right to ask for an interpreter.** If English is not your first language, insist that ICE call their language line for an interpreter.
- **Make a plan for your children.** Generally, if your child is also not required to appear at the appointment, you may want to leave them with a trusted caregiver. You know what is best for your children and your situation. If you leave them or bring them with you, try to plan with people you trust about what you would like to happen to your child/children, if ICE does not release you.
    - More information can be found here: Step-by-Step Family Preparedness Plan / Plan de Preparación Familiar | Immigrant Legal Resource Center | ILRC
    - Even if you do not have a plan in place, you should tell ICE that you are a parent and that you want to make plans for your children. More information can be found here: Know Your Rights: Five Things Parents Detained by ICE Should Know - NILC
- **Bring your immigration attorney if you have one.** As your attorney, they have the right to be with you during the entire appointment if they have filed proof with ICE that they are your attorney. This proof is a Notice of Entry of Appearance as Attorney of Record (G-28). It can be filed in person on the day of the appointment or electronically.
- **Consider bringing someone you trust.** Even if you do not have an attorney, consider bringing a trusted friend or member of your faith community to an ICE check-in. Only someone with permanent immigration status like a green card or someone with U.S. citizenship should enter the ICE field office. They may not be allowed to be with you throughout the whole appointment, but they may be allowed to sit with you in the waiting area and provide emotional support.

Conclusion

ICE should not detain pregnant, postpartum, and nursing people. A 2026 poll found that most Americans, more than two-thirds, agree that these individuals should not be detained. Medical experts have also agreed that for pregnant and postpartum people, alternatives to imprisonment should be prioritized to ensure the safety of the parent and child. Until policies and the law changes, we urge community members to support and advocate for the release of these vital members of our communities and families.

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