

Pregnant Immigrants and Asylum Seekers During COVID-19

U.S. Government Abuses at the Border and Beyond

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The U.S. government has exploited the COVID-19 pandemic to further eviscerate humanitarian and human rights protections for immigrants and people seeking asylum along the U.S.-Mexico border.

Since March 2020, the Department of Homeland Security (DHS) has used a Centers for Disease Control and Prevention (CDC) order to block and expel more than 109,000 migrants and people seeking asylum, including unaccompanied children. That CDC order has been indefinitely extended. Pregnant people are among the marginalized populations acutely affected by this order. Since the start of the pandemic, immigrant rights organizations have documented harrowing accounts of pregnant people who were mistreated in DHS custody, denied medical treatment while in labor, and forcibly expelled to unsafe locations in Mexico days after giving birth.

This issue brief outlines evidence of the mistreatment of pregnant immigrants and people seeking asylum at the U.S.-Mexico border and in U.S. immigration detention, and discusses how existing policies have created the conditions for escalating human rights abuses during COVID-19. This issue brief supports public health guidance and human rights standards directing the release of all people in immigration detention during the pandemic, but focuses on a subset of reforms that are urgently needed to ensure the health and safety of pregnant asylum seekers and immigrants during and long after the pandemic.

Immediate action is needed to ensure the health, safety, and well-being of pregnant migrants and asylum seekers during and long after the pandemic.

- In addition to the urgent need for releases from immigration detention during the pandemic, we call upon Immigration and Customs Enforcement (ICE) to, at minimum, reinstate and implement the policy of presumptive release for pregnant people. DHS can further strengthen protections by issuing a directive immediately prohibiting ICE from detaining any person who is pregnant or postpartum and requiring the release of any person found to be pregnant or postpartum in detention.
- As Customs and Border Protection (CBP) processes people seeking asylum and other protections at the border, the amount of time those individuals, including pregnant people and their families, spend in CBP custody should be minimized and need not exceed a few hours.
- Congress should direct ICE and CBP to allow third party monitoring and meaningful government oversight of the treatment of pregnant people in their custody.
- To ensure the protection of pregnant people seeking asylum, the CDC and the Department of Health and Human



**Maternal
Health**

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Services should immediately withdraw the CDC order, and DHS should restore the orderly and safe processing and parole or release of people seeking asylum.

COVID-19 HAS EXACERBATED LONG-STANDING HUMAN RIGHTS VIOLATIONS AGAINST PREGNANT MIGRANTS AND ASYLUM SEEKERS

Migrants and people seeking asylum are vulnerable to human rights violations perpetrated on the basis of their immigration status, gender, age, disability, real or perceived sexual orientation, gender identity or expression, race, primary language, ethnicity, and other status. Pregnant migrants and asylum seekers are at added risk of discrimination and adverse health outcomes.

Instead of creating policies that ensure the rights of asylum seekers and migrants are respected, the current administration has eroded already limited protections and undertaken efforts contrary to U.S. law, international law, and treaty obligations—to block and punish people seeking asylum, including pregnant people. Pregnant migrants and asylum seekers have fallen squarely at the intersection of the administration’s anti-women and anti-immigrant agendas, where they have been subject to egregious human rights violations.

The U.S. government’s response to COVID-19 has further exacerbated these abuses. Pregnant people in immigration detention face heightened threats to their health as ICE refuses to provide adequate medical care or exercise existing statutory authority to release them to safety. Pregnant people continue to face abuse and deplorable conditions in CBP custody. People seeking asylum at the U.S.-Mexico border face additional harms as a result of current

policies such as the CDC order that DHS has used to block and expel asylum seekers and other migrants, including unaccompanied children, without regard for particular harms falling on pregnant people.

These policies deny migrants the asylum and anti-trafficking protections required under U.S. law as well as due process. Asylum seekers turned back and/or returned to Mexico under other DHS policies have been forced to remain in makeshift camps or crowded shelters in Mexican border towns for months or years, where they lack access to basic hygiene and quality health care and face increased risks of sexual violence, kidnapping, and assault. Meanwhile, throughout the world, including Central America, the pandemic has led to marked increases in gender-based violence. By effectively eliminating human rights and humanitarian protections at the U.S.-Mexico border during COVID-19, the U.S. government is not only violating its domestic and international legal obligations, but is actively endangering people seeking asylum.

Documentation of the impact of immigration policies and COVID-19 responses on pregnant migrants and people seeking asylum remains limited. The evidence that does exist, however, paints a disturbing picture. Initial evidence suggests that rather than safeguarding the health and rights of pregnant people during COVID-19, the current administration has exploited the pandemic to further dehumanize and degrade this group. Further documentation and transparency are urgently needed to understand the scope and scale of abuses and danger facing migrants and people seeking asylum, particularly marginalized groups.

Discriminatory policies eroded human rights protections before COVID-19

In the last decade, there has been an increase in both the number and percentage of women and girls crossing the U.S.-Mexico border fleeing violence and political instability in Central America. A century of U.S. military and economic intervention in Central American countries has played an instrumental role in undermining democracy and stability in the region, creating conditions of poverty and gang violence. In interviews with the United Nations High Commissioner for Refugees (UNHCR), refugee women from Central America report being threatened, targeted, raped, and assaulted by criminal armed groups that exercise control over large swathes of territory in their home countries while also facing escalating levels of domestic violence. Many also report experiencing sexual and physical abuse while fleeing and making their journey to the United States.

Under the 1951 Refugee Convention, the principle of *non-refoulement* forbids governments from returning refugees to a country where they face serious threats to life or freedom. The Convention also generally prohibits governments from punishing individuals for the manner in which they entered a country in order to seek asylum. As a party to the 1967 Protocol relating to the Status of Refugees, the United States is bound to the requirements of the Refugee Convention and has codified these obligations into U.S. law. The United States has also ratified the Convention Against Torture, which prohibits *refoulement* of people to torture, and the International Covenant on Civil and Political Rights (ICCPR), which requires states to provide protection for individuals who claim a risk of a violation to their right to life even if they are not entitled to refugee status.

UNHCR has long recognized that the refugee definition encompasses gender-related persecution. Likewise, the U.N. Committee Against Torture stated in [General Comment No. 4](#) that the principle of *non-refoulement* applies in situations where an individual would be victim to gender-based torture if deported.

Repeated attempts to eviscerate asylum protections

Despite its obligations under U.S. law and treaty obligations, the current administration has attempted to eviscerate asylum protections for women and girls, including pregnant people. Regressive policies have [dehumanized and degraded](#) pregnant immigrants from specific countries and portrayed them as [undeserving](#) of humane treatment.

For instance, in 2018, Attorney General Jeff Sessions issued a decision that attempted to effectively [ban](#) refugee protection in cases of domestic or gang violence, stating that “generally, claims by aliens pertaining to domestic violence . . . will not qualify for asylum.” This decision directly contravenes U.S. law and treaty obligations. Numerous federal [courts](#) of appeal have [ruled](#) that survivors of domestic violence and other persecution at the hands of non-government actors may [qualify](#) for asylum and that [women](#) are a protected group under U.S. asylum law.

The administration has also deployed a range of illegal procedural blocks at the border to thwart access to asylum, including for pregnant people, such as:

1. [Metering](#), in which CBP officers artificially limit the number of people seeking asylum processed at ports of entry and force them to wait in Mexico for months to even apply for asylum;
2. The [Migrant Protection Protocols](#) (MPP), in which people seeking asylum and other migrants are returned to

Mexico to await U.S. immigration court hearings, often after having already suffered long wait times due to metering;

3. [Asylum Cooperative Agreements](#), in which people seeking asylum and other migrants are arbitrarily blocked from requesting humanitarian protections in the United States and are sent to Guatemala or potentially other unsafe third countries with which the United States has made these agreements;
4. The [Third Country Transit Bar](#) (currently blocked by courts as of the time of publishing), which made the vast majority of people seeking asylum at the southern border ineligible for asylum after July 16, 2019; and
5. [Fast-track deportation programs](#) such as the Humanitarian Asylum Review Process for Mexican nationals and Prompt Asylum Claim Review programs. These fast-track deportation programs keep people seeking asylum, including pregnant people, in substandard conditions in freezing CBP holding cells and effectively cut them off from legal counsel and due process during preliminary fear screenings, in which people seeking asylum must establish a significant possibility that they are eligible for asylum in order to have their request for protection considered by an immigration judge.

Together, these policies have systematically eroded the rights and protections available to people seeking asylum, exposing them to unprecedented levels of risk. The harms of these policies are felt acutely by pregnant people and other marginalized populations.

Pregnant people seeking asylum stranded in Mexican border cities

Before COVID-19, DHS was implementing metering and MPP to block, return, and strand people seeking asylum, including pregnant people, in Mexico for months

A pregnant woman from El Salvador was returned to Matamoros, Mexico in August 2019 under MPP while six months pregnant. Prior to being returned to Mexico, she was held by CBP in an overcrowded holding cell where she did not even have enough room to lie on the floor. She asked for medical treatment but was told there was no doctor. After four days in CBP custody, she was transported to Matamoros with five other pregnant women. She attempted to re-enter the United States due to fear for her safety in Mexico but was returned once again.

with limited access to medical care and at heightened risk of physical and sexual violence. While DHS’s internal MPP policy theoretically exempts certain vulnerable populations, pregnant people are not explicitly exempted. According to [DHS officials](#), “pregnancy may not be observable or disclosed and may not in and of itself disqualify an individual from participating in the Program.” Immigration attorneys have stated that pregnant people seeking asylum have been routinely [denied parole](#) and returned to [danger](#) in Mexico, even while in the third trimester. CBP has specifically [blocked](#) some pregnant people from attending their MPP hearings without explanation, prolonging the time they are stranded in Mexico under dangerous conditions.

People seeking asylum along the U.S.-Mexico border are [exposed](#) to high levels of violence and face risks of kidnapping, rape, extortion, and assault while awaiting court hearings. The indefinite [postponement](#) of MPP hearings during the pandemic has vastly increased the amount of time

A Guatemalan asylum seeker was forced to give birth in a Border Patrol Station. Despite repeated requests for medical attention from the woman who was eight months pregnant when she arrived at the southern border in February 2020, coughing and in severe pain, Border Patrol agents instead took her to the Chula Vista Border Patrol Station. Within 30 minutes, the woman's pain became excruciating, and she soon gave birth into her pants while standing up and bracing herself against the edge of a garbage can. She was then finally hospitalized. Two days later, she and her newborn were returned to the Border Patrol station, where Border Patrol agents repeatedly harassed her. She was not provided with a blanket for the baby or access to a shower for days after giving birth.

migrants are made to wait in Mexico, elevating their risk of experiencing violence. One study estimates that one in three migrants under MPP has experienced some form of violence. Due to high levels of violence, the U.S. State Department has issued a Level 4 “Do Not Travel” advisory for Tamaulipas, a region that includes the border cities of Nuevo Laredo and Matamoros, one of the areas where people seeking asylum have been blocked from applying for asylum under metering and returned to danger under MPP. This threat assessment is the same level of danger that has been assigned to Syria.

A tent encampment began along the Mexican border in Matamoros as asylum seekers returned there under MPP who feared leaving the port of entry area due to

targeting of migrants by organized criminal groups in the city and region. People in the encampment lack access to adequate medical care, including prenatal and obstetric care, safe shelter, security, sanitation, adequate food, and clean water. The Executive Director for Global Response Management, a nonprofit that works in combat and disaster zones, describes conditions in Matamoros as “one of the worst situations that I’ve seen.” Migrant shelters along the border have been the frequent targets of attacks by cartels. Migrants and staff at these shelters have been the victims of kidnapping, assault, and rape.

Human Rights First has documented cases in which pregnant women returned to Mexico under MPP experienced miscarriages and suffered violence from Mexican police, kidnapping, rape, and other persecution. In another report, Human Rights First identified at least 1,114 incidents of murder, rape, kidnapping, torture, and assault of asylum seekers and migrants returned to Mexico under MPP from January 2019 through early May 2020, including the beating and attempted kidnapping of a pregnant Cuban doctor. The ACLU of Texas has also documented numerous accounts of pregnant people, including individuals with high-risk pregnancies, sent back to Mexico under MPP, where they lack access to adequate shelter and medical care.

Migrants and asylum seekers with infants have also been subjected to egregious treatment under MPP. According to Human Rights Watch, families with young children have been required to arrive at border crossings between 3 and 4 a.m. for court hearings, making them highly vulnerable to attacks in the middle of the night. Human Rights Watch documented cases in which parents were verbally abused and threatened that their court hearing would be cancelled if their infants made noise or were unable to sit still.

Pregnant people mistreated in immigration detention

For years, the United States has been placing pregnant people in immigration detention, often in the custody of CBP or ICE, where they frequently lack access to adequate medical care and face health-threatening conditions.

Pregnant People in CBP Custody

According to government data, the U.S. Border Patrol processed more than 750 pregnant people from March 2017 to March 2019. From March 2018 to September 2019, the CBP Office of Field Operations (OFO), which is responsible for the ports of entry, reported processing more than 3,900 pregnant women. CBP facilities, including Border Patrol stations, lack basic necessities such as beds and showers, and are intended only for short-term custody. According to CBP policy,¹ which applies to Border Patrol and OFO, individuals should not be held longer than 72 hours in CBP facilities, while Border Patrol policy, which applies only to Border Patrol facilities, indicates that persons should not be held longer than 12 hours in these conditions.

While the current system requires that all people be held for a short period of time for processing, a complaint submitted by the ACLU to the DHS Office of Inspector General reported that pregnant people are regularly held in CBP facilities for prolonged periods of time well beyond 72 hours, where they face abusive and degrading treatment. In interviews conducted by the ACLU, pregnant people in CBP detention report experiencing excessive force, verbal abuse from Border Patrol agents, forced separation from their partner or newborn, medical neglect, and deplorable conditions. Investigations conducted by Human Rights Watch have found that CBP facilities are uncomfortably cold, fail to provide sleeping mats or bedding, and lack showers, hygiene materials, and adequate nutritious food.

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According to an [ACLU report of a pregnant person in CBP custody](#),

“the food she received was spoiled and served cold....the available drinking water had a burning smell of chlorine... [she] was not provided with any hygiene products...[and] was neither permitted a change of clothing nor provided a chance to shower for the duration of her detention.”

Many CBP facilities lack full-time medical staff or trained personnel to ensure adequate treatment of vulnerable populations. According to the ACLU complaint, while experiencing heavy bleeding or significant pain and asking for medical assistance, pregnant people in CBP custody have been [accused](#) by Border Patrol agents of “lying” or being “dramatic.” U.S. Senators have repeatedly [expressed concern](#) regarding CBP’s treatment of pregnant people, including shackling of pregnant people during transfers across facilities or to the hospital. The [U.N. Committee Against Torture](#) has stated that the use of restraints on pregnant people in detention constitutes cruel, inhuman, and degrading treatment. Inhuman conditions and lack of medical care in CBP facilities make them woefully inadequate and inappropriate for extended periods, particularly for vulnerable populations such as pregnant people.

Pregnant People in ICE Custody

In recognition of the health needs of pregnant people, a [2016 ICE policy](#) included a presumption of release for pregnant people unless their detention was considered mandatory or “extraordinary circumstances” warranted detention; even in these rare cases the policy suggested additional review. In 2017, the administration [ended this policy](#) of presumptive release for pregnant people.

Under the Trump administration, there was a [52% increase](#) in the detention of pregnant people in ICE custody in 2018 as compared

A Cuban doctor seeking asylum who miscarried while in CBP custody was nonetheless returned to Mexico under MPP. Due to CBP’s practice of metering asylum seekers, the woman and her partner, who fled Cuba in [July 2019](#) to seek asylum, were forced to wait for months in Ciudad Juárez, where she was beaten and nearly kidnapped while pregnant. In [March 2020](#), the woman miscarried while in CBP custody awaiting an MPP fear-screening interview, which she did not pass. She and her partner were returned to Mexico, where they have struggled to pay rent and afford medical care.

to 2016. Based on government data, ICE [detained](#) pregnant people 1,380 times in 2016 but 2,098 times in 2018. The length of ICE detention also increased, with 13% of detentions of pregnant people in 2018 lasting more than 30 days. Many of these individuals were previously in CBP custody, resulting in cumulative health harms from CBP and ICE detention facilities.

As the Center for Reproductive Rights and more than 250 organizations [warned](#) after the elimination of the presumptive release policy, the practice of arbitrarily detaining pregnant people contravenes international human rights norms. According to the [U.N. Special Rapporteur](#) on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the detention of pregnant women and women with young children must be reduced to a minimum and should only be considered when alternatives are unavoidable or unsuitable.

Despite guidance on the care of pregnant people in ICE custody,² numerous complaints submitted to DHS over the last several years have exposed rampant policy violations and a persistent pattern of cruel, inhuman, and degrading treatment of pregnant people in ICE detention. According to a [complaint](#) jointly filed by numerous immigrant rights organizations, ICE officials have [repeatedly](#) transferred pregnant people between ICE facilities, harming their health. In one instance, a woman who was 12 weeks pregnant was transferred between facilities [six times](#), with one transfer taking 23 hours, resulting in hospitalization for exhaustion and dehydration. The complaint also documented a trend of ICE failing to provide timely medical care to people in their custody,

even to those who are pregnant and experiencing severe bleeding and other health emergencies. The U.S. Government Accountability Office found that from January 2015 to July 2019, 58 pregnant women reportedly [miscarried](#) while in ICE custody.

Refusal to provide timely medical care to people in ICE custody raises significant human rights concerns. In [General Comment 2](#), the Committee Against Torture noted that in the context of detention and deprivation of medical treatment, particularly reproductive decisions, immigration status and gender can intersect to increase the risk of torture and ill-treatment. Despite repeated instances of miscarriage and negative health outcomes for pregnant people in detention, ICE has [continuously](#) denied or delayed the release of pregnant people without adequate justification. Due to the highly stressful and harmful conditions in ICE detention, attorneys and pregnant women in ICE detention have [reported](#) that some pregnant people have been so desperate to be released that they have abandoned their asylum cases altogether.

INADEQUATE CONDITIONS, ABUSIVE TREATMENT, AND TRAUMA NEGATIVELY IMPACT MATERNAL HEALTH

Through policies such as MPP, the U.S. government is forcing asylum seekers and migrants to wait in Mexico in dangerous and unsanitary conditions while awaiting U.S. immigration court hearings. Asylum seekers and migrants have been forced to live in crowded shelters, makeshift encampments, and migrant hostels, where

conditions pose significant risks to the health of pregnant people. In 2019, a doctor visiting the encampment in Matamoros on behalf of Physicians for Human Rights and the ACLU described the scene as “unsafe, unsanitary, and inhumane.” Residents of the encampment lack access to basic needs such as potable water, nutritious food, sanitation, and prenatal or obstetric care, and face exposure to extreme weather conditions. Meanwhile, pregnant people in CBP custody lack access to adequate food, clean water, and bedding.

Good maternal nutrition is necessary for the development of the fetus due to the increased need for specific vitamins and minerals during pregnancy. Lack of access to prenatal care and adequate nutrition increases the risk of pregnancy complications, preterm birth, low-birth-weight infants, and stillbirths. Crowded and unsanitary living conditions along the U.S.-Mexico border place pregnant people at increased risk of dehydration, diarrheal diseases, and infectious and mosquito-borne diseases.

Pregnant people in ICE and CBP custody, as well as individuals subject to MPP, face increased risk of adverse maternal health outcomes due to sustained levels of stress and trauma. This stress can lead to increased risk of infection or illness during pregnancy, postnatal depression, and in extreme cases, maternal mortality. Negative impacts to the fetus can include the disruption of fetal development, future developmental challenges long after birth, and fetal defects. For some pregnant people forced to remain in the border region, constant stress and fleeing from persecution has led to miscarriages. For those in detention, the continued use of shackling, including during labor and delivery, can increase the risk of falls and venous thrombosis, delay diagnosis of pregnancy complications, and obstruct medical care before and during labor.

PREGNANT MIGRANTS AND ASYLUM SEEKERS FACE ADDITIONAL ABUSES AND THREATS TO THEIR HEALTH DURING COVID-19

Increasingly inhuman and unlawful policies at the U.S.-Mexico Border

In an escalation of anti-asylum policies, the current administration is exploiting the COVID-19 pandemic to violate human rights and effectively eliminate humanitarian protections at the border required under U.S. law and international treaty obligations. Since March 20, 2020, DHS has used a CDC order to block and expel more than 109,000 migrants and people seeking asylum, including many unaccompanied children, either to Mexico or to their home countries.

CBP is also using the CDC order to turn away asylum seekers who had already waited months due to metering to request protection at ports of entry. According to a report by Human Rights First, one pregnant person seeking asylum was returned to Mexico by Border Patrol agents in late April while having contractions and asking for medical care. Five days after giving birth another woman was returned to Mexico during the pandemic, where she was left homeless after being turned away by a shelter.

On May 19, 2020 the CDC order was indefinitely extended. While the CDC order claims to protect public health during the pandemic, public health experts have derided the discriminatory intent of the order, which specifically targets individuals based on immigration status—a distinction with no public health rationale.

On June 15, 2020, the administration again sought to dismantle humanitarian protections through a new proposed asylum regulation. The proposed rule would drastically narrow eligibility for asylum, specifically bar asylum for individuals seeking

A pregnant Honduran woman who crossed the U.S.-Mexico border in late March 2020 with her three-year-old child to seek asylum was expelled to Mexico under the CDC order just five days after giving birth. Border Patrol agents returned the woman along with her two children to Reynosa, Mexico, an incredibly dangerous city. Due to COVID-19, the family was turned away by a shelter in Mexico.

A recent survey conducted by the International Organization for Migration (IOM) found that approximately 3.4% of migrant and asylum-seeking women in Ciudad Juárez, more than 200, were pregnant. Global Response Management estimates that approximately 300 pregnant asylum seekers and migrants were living in Matamoros as of May 2020.

protection on the basis of “gender,” and, among other things, make it much more difficult to qualify for asylum where the persecution is carried out by non-government persecutors, as in many cases of gender-based violence. The proposed rule directly violates U.S. law and treaty obligations, which recognize gender-based persecution as grounds for asylum.

Most recently, on July 9, 2020, the Department of Justice and DHS published a proposed rule that seeks to again use public health as a pretext to bar virtually all asylum seekers on public health grounds

In late April 2020, Border Patrol agents in Arizona expelled a pregnant Honduran asylum seeker and her two daughters to Mexico under the CDC order. The agents expelled the woman, who became pregnant as a result of rape in Mexico, while she was having contractions and asking for medical attention. They refused to give her a fear screening despite her expressed fear of returning to Mexico and Honduras.

A 38-year-old community organizer, who fled Haiti with her husband and two-year-old child after receiving threats, gave birth in an ambulance in Mexico while waiting to be granted entry into the United States. Due to the CDC Order, the family was unable to seek asylum at the border and was forced to wait in the dangerous city of Reynosa, Tamaulipas. Due to severe overcrowding at the shelter in Reynosa, the pregnant woman and her family lived in a tent while awaiting the birth of their child. In April 2020, she gave birth in a Red Cross ambulance, since the local maternity hospital lacked available doctors due to COVID-19.

regardless of whether they have a disease covered by the rule or have even been exposed to such a disease. In a letter, 170 leading public health and medical experts condemned this rule as “xenophobia masquerading as a public health measure.”

Eliminating protections for people seeking asylum and unaccompanied children is particularly deplorable in the context of documented increases in intimate partner violence during COVID-19 that may cause people to flee their countries for protection. In the Dominican Republic, for instance, the Ministry of Women’s helpline received 619 calls during the first 25 days of quarantine, while reports of domestic violence during lockdown increased 175% in Colombia, compared to the same time period last year, and calls to the family violence helpline in Mexico City shot up 97%.

Escalating human rights abuses at the border

Policies put in place during COVID-19 have emboldened CBP officials, resulting in heightened levels of mistreatment and abuse. Pregnant people in CBP custody have faced harassment, verbal abuse, separation from their partners, risk of forced separation from their newborns, and forced expulsion without due process soon after giving birth. News reports and a complaint by the ACLU have documented cases of new mothers being coerced by Border Patrol to agree to be expelled to Mexico under the CDC order days after giving birth to avoid losing custody of their U.S.-born infants. While Border Patrol has discretion to parole families together in the U.S., they have repeatedly forced families with newborn children to return to Mexico, despite expressed fear for their safety.

Conditions for pregnant people at the border have continued to deteriorate, as they face homelessness, violence, inadequate medical care, and increased risk of COVID-19. During the pandemic, many

shelters along the border have closed their doors to new asylum seekers or shut down altogether, resulting in increased displacement. Pregnant people face additional risks as MPP hearings are suspended, forcing them to wait indefinitely. For months, DHS required people seeking asylum, including pregnant people with underlying conditions, to travel to the border multiple times to receive updated hearing notices when their hearings were postponed, needlessly exposing them to additional danger and risks to their health. As the administration prolongs the time people seeking asylum are forced to remain at the border, individuals face higher risk of violence and amplified risk of COVID-19 due to crowded, unhygienic conditions, with little access to medical care. On June 30, 2020 the first case of COVID-19 was confirmed in the migrant encampment in Matamoros.

These reports represent only the tip of the iceberg. The scale and scope of human rights abuses at the border during COVID-19 remain largely unknown. Anecdotal reports, however, have suggested that DHS’s use of the CDC order to effectively eliminate humanitarian protection at the border has had devastating and far-reaching impacts on the rights, health, and safety of people seeking asylum, including vulnerable populations. Swift policy action must be accompanied by documentation efforts to better understand the impacts of the CDC order and the accompanying risks of COVID-19 on pregnant people.

Heightened risks in ICE detention

DHS’s failure to heed warnings from public health and detention experts to release detainees and halt transfers between facilities has resulted in significant outbreaks of COVID-19 in ICE detention centers, placing all detained individuals and staff at high risk of infection. Inspectors have reported a lack of adequate soap, disinfectant, and personal protective

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equipment in ICE facilities, and people in detention have described overcrowded conditions and poor sanitation. According to a peer-reviewed study modeling COVID-19 transmission in ICE detention facilities containing at least 25 people, in the most optimistic scenario, 72% of individuals would be infected with the virus within 90 days. As of July 31, 2020 ICE reported that nearly 20% of people tested in its custody had contracted COVID-19; at least six detainees have died after contracting COVID-19. The actual number of cases and deaths is likely to be much higher.

While the risk of contracting COVID-19 for all people in immigration detention is alarmingly high, the CDC lists pregnant people among those who may be at increased risk of severe illness. Prior research has indicated that when infected with influenza and other viral respiratory infections, pregnant people have typically been at higher risk of experiencing severe illness. Recent evidence published by the CDC found that pregnant people who tested positive for COVID-19 were significantly more likely to be admitted to the intensive care unit and receive mechanical ventilation compared to nonpregnant women with COVID-19.³ The potential for increased risk of severe illness among pregnant people with COVID-19 requires additional precautions to reduce the exposure of pregnant people to the virus.

Crowded and unsanitary conditions and unsafe employee practices in ICE detention facilities preclude pregnant people and other individuals in detention from maintaining a safe distance from other detained people, maintaining personal hygiene, or receiving timely medical care. According to a correctional officer who worked at Eloy Detention Center, employees were instructed to ration masks and gloves, water down sanitizers, continue transferring detainees during outbreaks, and keep working even after showing

A 24-year-old pregnant woman, who fled Honduras after the father of her unborn baby was murdered and she had been threatened, was expelled before dawn to Mexico under the CDC order. In July 2020, Border Patrol agents swiftly returned the woman, who was eight-months pregnant without an opportunity to request asylum. U.S. officers brought her to the Paso del Norte bridge and forced her to walk across the border into the dangerous Mexican border city of Ciudad Juárez at 4:56 am. With no money and no cell phone, the woman had no means to find assistance.

COVID-19 symptoms. Whistleblowers from an ICE detention facility in Louisiana reported similar mismanagement of facilities during COVID, including mixing healthy detainees and staff with those exposed to COVID-19, banning the use of protective equipment for several weeks, deporting individuals who contracted COVID-19 in detention, and failing to sanitize spaces frequently. A lawsuit filed by the ACLU in August 2020 alleged that ICE intentionally barred COVID-19 testing at some facilities after receiving testing kits. Moreover, Inland Coalition for Immigrant Justice and Freedom for Immigrants has provided first-person reports from people in ICE detention that chemical disinfectants used in some ICE detention centers during the pandemic are causing bleeding, pain, and respiratory problems. Such practices have exacerbated the pre-existing risk of outbreaks in detention facilities and increased the risk of spreading the virus through continued deportations.

ICE has not only failed to take the necessary measures to protect people in its custody, but has also failed to ensure the release of detainees, including pregnant people. As of August 21, 2020, more than 21,000 individuals remain in ICE custody. In its COVID-19 Pandemic Response Requirements, ICE arbitrarily rejected the CDC's inclusion of pregnant people among those at high risk for COVID-19 infection, and omitted pregnant people from the list of detainees at higher risk of harm. This intentional omission is consistent with ICE's pattern of disregard for the health, welfare, and treatment of pregnant people.

In response, numerous immigration advocates across the country have filed and won lawsuits for the release of high-risk individuals from ICE detention during the pandemic, including pregnant people.

RECOMMENDATIONS

The health, safety, and rights of marginalized populations must remain central to the COVID-19 response and beyond. When government policies and actions jeopardize the health and safety of migrants and people seeking asylum, the additional risks and harms imposed on pregnant people must be considered in developing adequate remedies.

Human rights, immigration, and public health experts have repeatedly issued recommendations to address long-standing abuses as well as harmful actions by the administration during COVID-19. The following subset of recommendations are urgently needed to ensure the health and safety of pregnant asylum seekers and migrants during and long after the pandemic:

- **In accordance with U.S. law, treaty obligations, and the recommendations of public health experts, the CDC and the Department of Health and Human Services should immediately withdraw the March 20 CDC order and its extension, and DHS should restore the orderly and safe processing and parole of people seeking asylum.** CBP should immediately stop expelling pregnant people and ensure they are released, along with

family members, into U.S. shelters or with personal support networks. A [study](#) of people seeking asylum at the U.S.-Mexico border found that 92% have family or friends they could live with in the U.S. while pursuing their claims. Rather than being forced to remain in limbo at the border, people in MPP, including pregnant people who face particular health harms should be permitted to safely shelter in place in the United States with access to medical care.

- **CBP should ensure the safe and timely processing of asylum seekers and unaccompanied children at the border, as required by U.S. law, and minimize the amount of time pregnant people and their family or partner spend in CBP detention during processing.** To ensure the safe and timely processing of people seeking asylum, CBP should not use metering or impose other restrictions on asylum seekers at ports of entry, and should make use of [recommended](#) public health measures to safeguard asylum seekers and DHS staff during processing. Due to inadequate conditions in CBP facilities, which impose particular risks on pregnant people, CBP should minimize the amount of time people are held for processing and ensure no individual is held in these facilities for more than a few hours. CBP should prioritize family unity in all instances by ensuring that family members and partners are released along with the pregnant person.
- **ICE should cease the detention of all migrants during the COVID-19 pandemic and prohibit the detention of pregnant and postpartum migrants.** During the COVID-19 pandemic, ICE should cease all new detentions and release persons from immigration detention, including pregnant people along with their families. Parole and appropriate, community-based

alternative to detention programs that were formerly available should be resumed, improved, and expanded. ICE has statutory authority and [broad discretion](#) to release individuals in its custody, and there is overwhelming evidence that ICE detention facilities are inadequate to safeguard the health and well-being of asylum seekers and immigrants, including pregnant people. Expanding the use of parole and release will reduce risks of COVID-19 transmission in crowded detention facilities, while also ensuring pregnant people have access to essential services.

Given the significant health risks associated with detention, ICE should at minimum reinstate and implement the presumption of release for pregnant people and ensure appropriate community-based alternative to detention programs, such as the [Family Case Management Program](#), are in place for pregnant people and their families long after the pandemic. DHS can and should further strengthen protections for pregnant people by issuing a directive immediately prohibiting ICE from detaining any person who is pregnant or postpartum and requiring the release of any person found to be pregnant or postpartum in detention.

- **Congress should direct ICE and CBP to allow third party access and monitoring of their facilities and request a robust investigation by the DHS Office of Inspector General.** Lack of accountability and transparency within the U.S. immigration system has created the conditions for rampant abuses of power and human rights violations. Both during and after the pandemic, meaningful independent monitoring efforts must be undertaken to review ICE's and CBP's treatment of pregnant people they expel, detain or return to Mexico. Regular monitoring by independent subject matter experts

is necessary to ensure the treatment of pregnant migrants and asylum seekers is consistent with U.S. and international law and treaty obligations.

While immediate action is essential, persistent systemic abuses require long-term efforts to reform the immigration and asylum systems to ensure the human rights of all immigrants and people seeking asylum are protected, and that pregnant people and other marginalized groups are not subjected to abusive treatment.

COVID-19 has underscored the need for policies that comply with existing U.S. law, align with international treaty obligations, and promote transparency and accountability. Long-term failure to address inequitable and discriminatory systems provides the conditions for amplified abuses and health disparities during public health crises.

Endnotes

- 1 CBP facilities are governed by the [TEDS standards](#) (National Standards on Transport, Escort, Detention, and Search), which require officials to identify whether an individual is pregnant and considered "at-risk," but does not specify what additional care or oversight should be provided to vulnerable individuals in detention.
- 2 ICE facilities are typically governed by one of four sets of detention standards, including the 2008 and 2011 ICE Performance Based National Detention Standards (PBNDS), the 2019 National Detention Standards, and the Family Residential Standards, all of which address medical care for women in some way, and ICE Health Service Corps policies on medical standards for pregnant women. ICE also issued a directive on the care of pregnant women in 2018 that weakened and superseded requirements from the 2016 policy.
- 3 Due to large gaps in the data, additional studies should be conducted to verify the results.