

# BARRIERS TO REPRODUCTIVE JUSTICE WHILE DETAINED

An examination of select issues relating to reproductive health and the care of young children in immigration detention



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California

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## Introduction

United States Customs and Border Protection (CBP) detained nearly one million immigrants at the U.S.-Mexico border in the fiscal year 2019.<sup>1</sup> The number of family units confined tripled compared to any previous year on record.<sup>2</sup> With these increasing numbers of detained individuals, facilities detaining migrants run by CBP and Immigration and Custom Enforcement (ICE) were constantly at- or over-capacity prior to the coronavirus pandemic.

While these numbers have trended down since April 2020 due to the outbreak, there are still tens of thousands of people in immigration detention despite having a range of health and other specialized needs, such as pregnancy or young infants. These individuals are still being held for long periods of time in conditions that are often overcrowded and poorly equipped instead of being released to community care where they could more easily access critical resources.

The detention of immigrants is inherently a violation of reproductive justice, as it denies people their bodily autonomy and human rights. Within the system, practices of and conditions in detention facilities compound the problem, as horrifically exemplified by the coerced sterilization of detained people in a Georgia center. This document provides yet another view, by highlighting a number of areas in which CBP and ICE facilities are failing to meet the basic needs of detained individuals with respect to reproductive health care and the care of young children.

*Barriers to Reproductive Justice While Detained* seeks to promote awareness of these problems among the legal and medical providers working with detained people, and to provide ready access to some of the relevant legal standards. The five areas of focus—menstruation-related hygiene, lactation accommodations, access to diapers and formula, and pregnancy-related medical care—are not exclusive nor exhaustive but were the areas most frequently mentioned in interviews conducted with formerly detained persons.<sup>3</sup> Because CBP and ICE officials often failed to inform the detained individuals where they were being held in a language that they understood, most of those interviewed did not know the names of the facilities, or whether they were held in a CBP or ICE facility. Many interviewees also reported being transferred to multiple facilities during their detention.

Each detention center or facility is obligated to follow certain standards. CBP detention centers are subject to the 2015 National Standards on Transport, Escort, Detention, and Search (TEDS).<sup>4</sup> ICE facilities are either subject to the National Detention Standards (NDS) or the Performance-Based National Detention Standards (PBNDS).<sup>5</sup> This document includes a quick reference to each highlighted issue's applicable detention standards, which are explored in greater detail in the accompanying tool, *Barriers to Reproductive Justice While Detained: Key Standards*.<sup>6</sup>

We hope that, by applying a reproductive justice lens to immigration detention, these documents offer a new advocacy avenue to support and enhance legal and service providers' powerful work with and on behalf of people who have been subjected to immigration detention in the United States.

## Access to Menstruation-Related Hygiene Products

Restricted access to appropriate menstrual hygiene products and the inability to change such products when needed can lead to individuals developing urinary tract infections, vaginal bacterial and yeast infections, and life-threatening gynecologic infections such as Pelvic Inflammatory Disease.<sup>7</sup> Prolonged use of a tampon, for instance, can lead to Toxic Shock Syndrome, a rapid and deadly infection.<sup>8</sup> Such untreated vaginal infections are also associated with cervical cancer and can cause infertility and sterility.<sup>9</sup> The use of unhygienic substitutes due to the denial of sufficient menstrual products can also lead to higher rates of infection.

Detention facilities' policies state that individuals should have access to basic personal hygiene items. For example, ICE's 2011 Performance-Based National Detention Standards (PBNDS) specifies that "female detainees shall be issued and may retain sufficient feminine hygiene items, including sanitary pads or tampons."<sup>10</sup> Yet detained people consistently reported that immigration jails fail to adhere to these policies.

Interviewees reported that they often had to knock on the doors of their cell and ask an official—who didn't always speak or understand the detained person's language—for supplies like menstrual pads and toilet paper. They experienced delays in accessing these supplies due to insufficient supplies or selective distribution of supplies by detention staff. For example, Beatriz, 15, remembered being given one pad a day, but on other occasions, only six pads were distributed to a room of 80 people who could have been menstruating. Staff members told her that there were too many women<sup>11</sup> and there weren't enough supplies for everyone.

In other instances, staff would simply refuse to provide supplies and/or would become angry with those asking for them. For example, according to Celia, 44: "They didn't have any supplies for us, so we had to knock and ask for menstrual products and toilet paper when we ran out. Some guards would get mad and yell at us or refuse to give it to us."

Some interviewees, like Angelica, were never given any menstrual hygiene products and had to utilize what limited other resources they had on hand—such as diapers, toilet paper, or even their own clothing. Angelica also described the lack of access to other essential hygiene supplies. She was given only one pair of underwear upon her arrival, which she had to wear for the 10 days she was detained. Despite asking for a clean pair, since hers was messy with blood, the officials refused to give her another. She was also denied a shower.

"I wasn't given any menstruation pads. I asked officials three times and was told to wait but they never came. On the first day, I was given one shirt and had to tear it up to make some padding. I also had to use diapers as pads."  
—Angelica, 30\*

*\* All names from here on are pseudonyms to protect the interviewees identities*

## ACCESS TO MENSTRUATION-RELATED HYGIENE PRODUCTS

**TEDS:** Requires access to basic hygiene articles and toiletry items “such as sanitary napkins”

**NDS 2000:** Addresses clean clothing and bedding, but not specifically menstrual hygiene

**PBNDS 2008:** Most detailed regarding menstrual hygiene products, including that their distribution shall not “be used as reward or punishment” and that people issued products may retain them as needed

**PBNDS 2011/PBNDS 2016:** Requires that “sufficient” menstrual products be issued and may be retained on an as-needed basis

**NDS 2019:** Requires “basic personal hygiene items” be provided “as needed at no cost to the detainee”

*See details on Key Standards, page 4*

## Access to Diapers

Detention facilities should provide diapers and wipes in a timely manner. Infants are unable to control their bowel habits and time their bowel movements to more ideal conditions. Delay in changing an infant’s diaper after it is soiled can lead to dermatitis, or urinary or skin infections.<sup>12</sup> In ICE’s clinical manual for nurses and other medical professionals under the ICE Health Service Corps (IHSC), which provides direct care to the detained persons housed at 21 designated facilities throughout the country, the guidelines state that “[p]revention [of diaper dermatitis] is key to treatment.” It further recommends that medical professionals educate parents to “change soiled diapers as soon as possible . . . [and as frequently as] every two hours during the day,” if dermatitis is present.<sup>13</sup>

Standards governing detention facilities dictate the provision of such hygiene items for infants. The 2011 PBNDS standards that govern ICE’s interactions with detained individuals state that “detainees shall be provided with basic personal hygiene items (e.g., . . . diapers and sanitary wipes), as appropriate.”<sup>14</sup> Meanwhile, TEDS states that, while in CBP custody, “[f]amilies with small children should have access to diapers and baby wipes.”<sup>15</sup>

“My two-year-old daughter was sick while we were detained in Calexico. She was having diarrhea and refused to eat. I asked the officials to have her see a doctor but they said it wasn’t an emergency. The officials told us to stop bothering them with requests. They only gave us one diaper a day despite her having diarrhea. I had to use my own clothes to clean my child. We didn’t even have spare toilet paper. They only gave us one toilet paper roll for the 50 people in the cell a day.”

– Flor, 30

“We were given two diapers for my one-year-old upon arrival and then, when I requested more diapers, I had to wait six hours for another diaper.”

– Elizabeth, 31

Interviewees' experiences demonstrate that, despite these CBP and ICE standards, detained people are being denied diapers in the quantity and timeframe that they need and that the standards ostensibly support. Interviewees consistently reported that although they knocked on cell doors and asked staff members for more diapers for their young children, officials often withheld the supplies, informing the parents that they had to wait for an undisclosed and arbitrary amount of time. For example, Gabriela, 23, stated that "[t]he room was so cold that my four-year-old son didn't want to take off his pants to use the bathroom despite being potty trained. I ended up putting diapers on him. I had to keep asking for diapers. They ended up only giving me five diapers in two days and when I asked for more, they told me, 'there's no more; you have to wait'."

## **ACCESS TO DIAPERS**

**TEDS:** Requires that "families with small children" have "access to diapers and baby wipes"

**NDS 2000:** --none--

**PBNDS 2008:** --none--

**PBNDS 2011/2016:** Requires the provision of "basic personal hygiene items," such as diapers and sanitary wipes

**NDS 2019:** Requires the provision of "basic personal hygiene items," such as diapers and sanitary wipes

*See details on Key Standards, page 7*

# Lactation Accommodations and Support

## *Lactation Accommodations*

Breastfeeding infants is strongly recommended by leading health organizations around the world and has been proven to be unambiguously beneficial to both parent and child.<sup>16</sup> For the child, breastfeeding is protective against diabetes, infections, and even respiratory illnesses. Meanwhile, breastfeeding parents have lower risk of developing high blood pressure, obesity, and certain cancers. In fact, the American Academy of Pediatrics recommends exclusive breastfeeding for a child's first 6 months of life.<sup>17</sup> Lactation is a pregnancy-related condition, and so refusing to give nursing parents appropriate lactation accommodations is a denial of medically necessary health care.

Unlike for the other issues examined in this document, current CBP and ICE standards lack any explicit requirements around lactation beyond having intake screening questions regarding breastfeeding.<sup>18</sup> However, the 2011 PBNDS incorporates the National Commission on Correctional Health Care (NCCHC) standards which delineate the standards for a carceral health delivery system in the United States. The 2017 NCCHC standards adopted a position statement highlighting the importance of centers to “devise systems to enable postpartum women to express breast milk for their babies and to breastfeed them directly.”<sup>19</sup> Current NCCHC standards do recommend that “[f]acilities should consider support for lactating mothers and those with breast engorgement who are not nursing” but do not specify how such support may take form.<sup>20</sup>

“We were detained in a large room with as many as 100 women and men, some adults as old as in their 40s. I was primarily breastfeeding my two-month-old baby, but there was no privacy. I had to bare my breast in front of everyone every 15-20 minutes to feed her.”  
– Josefina, 19

## **LACTATION ACCOMMODATIONS AND SUPPORT**

**TEDS:** Most detailed requiring that CBP officers determine whether a person who is detained is nursing before placement into a holding room and that “a reasonable amount of privacy” is ensured for all detained people for toileting; requires that “nursing mothers” and children stay together

**NDS 2000:** --none--

**PBNDS 2008:** --none--

**PBNDS 2011/2016:** Addresses that an initial health assessment must inquire the detained person's lactation status

**NDS 2019:** Requires that a qualified healthcare practitioner must perform an initial health assessment that inquires the detained person's lactation status

*See details on Key Standards, page 8*

Detention facilities should be cognizant of creating spaces that encourage breastfeeding. For example, privacy is a key component in supporting one's comfort and ability to breastfeed one's child. Instead, detention center officials have been reported to be dismissive and openly antagonistic of breastfeeding. As the intake coordinator of a humanitarian non-profit organization on the border described, "I perform intakes of hundreds of migrants for a legal clinic every week. A few weeks ago, a woman came, carrying a baby about seven months old. She asked me if it was okay to breastfeed there. Startled, I reassured her that it was fine to do so and found her a seat in a private office to do so. She began to cry. I asked her why she was crying, and she told me that while she was detained, an official told her that she should be ashamed for breastfeeding in public. As a result, she didn't breastfeed her child the entire time she was detained."<sup>21</sup>

### *Access to Sufficient Formula*

Infants need regular feedings throughout the day. From as early as a few weeks of age, infants may require 32 ounces of formula a day.<sup>22</sup> Particularly at this age, appropriate nutrition lays the foundation for a child's lifetime of healthy development and growth. Very young babies who are insufficiently fed are at risk of developing low blood sugar, low blood pressure, and even irreversible brain injury.<sup>23</sup>

#### **ACCESS TO SUFFICIENT FORMULA**

**TEDS:** Most detailed standards regarding provision of food for juveniles, including that the food be offered at least every six hours and "appropriate for at-risk detainees' age and capabilities, such as formula and baby food"

**NDS 2000:** --none--

**PBNS 2008:** --none--

**PBNS 2011/2016:** Requires access to "snacks, milk, and juice"

**NDS 2019:** Requires that juveniles and babies have "regular access to snacks, milk, juice, etc."

*See details on Key Standards, page 9*



Multiple laws and standards are in place dictating proper treatment of juveniles in detention.<sup>24</sup> At a minimum, ICE is required to meet basic standards of care for minor non-citizens in its custody.<sup>25</sup> The 2011 PBNDS standards expound upon this requirement by highlighting that “minors, pregnant women and others shall have access to snacks, milk, and juice.”<sup>26</sup> The TEDS standards specifies that juveniles must have “regular access to . . . milk.”<sup>27</sup>

Yet, detained parents and other bystander witnesses regularly reported hungry, crying babies in custody. The infant of one interviewee Gloria, 38, was only given one or two two-fluid-ounce bottles of formula each day and cried constantly from hunger. The one-year-old son of another parent Araceli, 31, was so hungry, he couldn’t sleep; her requests for more formula were frequently met with staff members yelling at her and shutting the door in her face. He lost three pounds, or 15% of his body weight, after being detained for eight days.

Sometimes, detained people had access to a table full of supplies, including formula, diapers, crackers, and juice. However, the restocking of these tables was inconsistent and not based on when items ran out. One adolescent Linda, 14, noted that even infants went hungry when the tables ran out of formula. Furthermore, many of the food items on these tables were expired by several months, yet individuals who were detained—even young children—still ate these expired items because there were no other options. As one interviewee Esmerelda, 30, described, “All of us were also skeptical about the quality of the food and the formula given the past expiration dates, but we were so hungry, we still ate.”

“I usually breastfeed my youngest child, which has never been a problem, but while in the icebox [cramped holding cells in CBP custody], I hadn’t been given very much food, so I wasn’t eating very well. After three days, my breastmilk dried up and so I had to switch to formula to feed my child. I had to knock and ask for formula. A few officials told me to stop asking for diapers and formula, and I was only given one diaper a day. I was afraid to ask for more because they would yell at me. My baby was only given one small plastic cup [approximately three to five ounces] of formula to drink a day, and she didn’t drink very well because she was so cold all the time.”

– Dolores, 29

## Pregnancy Care

### *Miscarriages*

Miscarriage is just one potential serious complication in pregnancy; others include preeclampsia and eclampsia, gestational diabetes, stillbirth, and hemorrhage.<sup>28</sup> In fact, an estimated six to eight percent of pregnancies experience high-risk complications.<sup>29</sup> Meanwhile, stress has been linked to a 42% increase in the likelihood of miscarriage.<sup>30</sup> Since detention is a major source of stress and trauma for a population that is likely already traumatized, staff at detention facilities should be attuned to the increased needs and risks of possible pregnancy complications of this vulnerable population.

As part of their arrival process to either ICE or CBP detention, female detained persons must undergo an initial health assessment that is supposed to inquire, in part, whether they are pregnant or lactating.<sup>31</sup> A pregnancy test may also be used to confirm an individual's pregnancy status. These screenings are to determine whether certain people who are detained, such as those with physical disability or with previous sexual trauma, should be considered and labeled as "at [higher] risk" than the general population.<sup>32</sup> However, nearly all women interviewed for this article reported not being screened for pregnancy or breastfeeding before they were placed into a cell.

### **PREGNANCY CARE**

**TEDS:** CBP officers must determine whether a detained individual is pregnant before holding them, and pregnant detained persons must have "regular access to snacks, milk, and juice"

**NDS 2000:** Addresses the emergency medical care protocol, but does not specify pregnancy-related medical care or emergencies

**PBNDS 2008:** Requires a medical screening to be performed that inquires about the possibility of pregnancy

**PBNDS 2011/2016:** most detailed about pregnancy-related medical care and requires that detained people receive obstetrical health care "consistent with recognized community guidelines for women's health services," including prenatal and specialized care

**NDS 2019:** Requires "close medical supervision" if a detainee is confirmed by a health care practitioner to be pregnant; acknowledges that pregnant detained persons may have specialized dietary requirements

*See details on Key Standards, page 10*

“I knew I was about two months pregnant when I arrived to the border from Honduras. No one asked about my pregnancy status when I was detained; and, I wasn’t given the chance to take a pregnancy test. On my second day of detention, I started having heavy vaginal bleeding with clots. My belly also hurt. I told an official, but he looked at me and said that I was a liar. I kept having heavy vaginal bleeding my entire time detained. The whole room of women were only given one box of sanitary pads (about 12 pads) a day and two rolls of toilet paper. If you asked for more, the officials yelled at you and shut the door in your face. The other women in the room saw that I was bleeding a lot and gave me their toilet paper since there weren’t enough pads. I was too scared to ask the officials for any medicine for my belly pain because I didn’t want them to be angry with me. I never saw a doctor. I was released to Mexico after five days. In Mexico, I couldn’t go to a doctor because my husband and I didn’t have enough money. I was bleeding enough to fill six pads a day. A month later, I fainted, and my husband called an ambulance. I was brought to the hospital and found to have an incomplete miscarriage. The doctor immediately injected me with iron to help me with my anemia. I needed six more injections in the coming weeks. I have four children. This has never happened before.”

– Cynthia, 28

Despite PBNDS 2011’s section on women’s medical care clearly stating that pregnant detained people should receive “close medical supervision” as well as “access to prenatal and specialized care and comprehensive counseling,”<sup>33</sup> national data suggest that violations of these standards are rampant. Multiple parents have reported loss of a pregnancy while detained; the number of miscarriages in ICE detention facilities has doubled since August 2018.<sup>34</sup> Most of the parents who experienced a miscarriage describe a delay of hours, up to days or weeks, until they received medical attention; some did not see a medical provider while detained at all, and were released, still bleeding and in pain.

Advocates at legal aid organizations operating across the border also noticed increased numbers of asylum seekers suffering miscarriages while detained by US immigration authorities at the border. One attorney described similarities in three recent cases brought to the attention of her organization: “the women made repeated requests for help from authorities after experiencing vaginal bleeding. Instead of attending to the women, immigration authorities ignored them for hours, leaving them to bleed and miscarry in their cells, and only bringing them to a hospital after it was too late.”<sup>35</sup> These stories reveal a widespread pattern of detention centers neglecting the medical needs of their particularly vulnerable detained persons and failing to adhere to their own standards.

# Credits

Theresa Cheng, MD, JD, conducted the interviews and wrote this document in collaboration with the Gender, Sexuality & Reproductive Justice team and the Immigrants' Rights team of the ACLU Foundations of California. Primary contributors include Arnetta Rogers, Reproductive Justice and Gender Equity Attorney, ACLU of Northern California; and Phyllida Burlingame, Legal-Policy Co-Director (Policy), ACLU of Northern California. Mitra Ebadolahi, Senior Staff Attorney, ACLU of San Diego & Imperial Counties, and Monika Langarica, Immigrants' Rights Staff Attorney, ACLU of San Diego & Imperial Counties, assisted with review. Design by Gigi Harney. Cover art by Micah Bazant for Forward Together and Mijente.

*Barriers to Reproductive Justice While Detained* is available online at [www.aclunc.org/RJdetained](http://www.aclunc.org/RJdetained)

An accompanying tool, *Barriers to Reproductive Justice While Detained: Key Standards*, is available online at [www.aclunc.org/RJdetained](http://www.aclunc.org/RJdetained)

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The ACLU Foundations of California are the ACLU Foundation of Northern California, the ACLU Foundation of San Diego and Imperial Counties, and the ACLU Foundation of Southern California. Our statewide Gender, Sexuality, and Reproductive Justice team works to ensure equal access to reproductive health care and to support the rights of all to parent with dignity. Our statewide Immigrant's Rights team works to ensure that the rights and liberties guaranteed by our constitution apply to all immigrants, regardless of immigration status.

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# Endnotes

- 1 See *Southwest Border Migration* FY 2019, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last visited Oct. 14, 2020).
- 2 *Id.*
- 3 This document is based on information derived from approximately 50 interviews conducted October 8-11, 2019, in Mexicali, Mexico, with parents and children who had recently been detained in the United States and were staying in shelters dedicated to migrants in Mexico under the Migrant Protection Protocols (MPP). The interviews were conducted in Spanish. The average duration of detention in the United States for those interviewed was five days. (Interviews on file with author).
- 4 U.S. CUSTOMS & BORDER PROTECTION, *National Standards on Transport, Escort, Detention, and Search* (Oct. 2015).
- 5 Immigr. & Naturalization Service, *2000 Detention Operations Manual*, <https://www.ice.gov/detention-standards/2000> (last visited Oct. 14, 2020); U.S. IMMIGR. & CUSTOMS ENFORCEMENT, 2008 OPERATIONS MANUAL ICE PERFORMANCE-BASED NATIONAL DETENTION STANDARDS, [HTTPS://WWW.ICE.GOV/DETENTION-STANDARDS/2008](https://www.ice.gov/detention-standards/2008) (last visited Oct. 14, 2020); U.S. IMMIGR. & CUSTOMS ENFORCEMENT, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 (2016); U.S. IMMIGR. & CUSTOMS ENFORCEMENT, 2019 NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES, <https://www.ice.gov/detention-standards/2019> (last visited Oct. 14, 2020).
- 6 It is important to note that all centers detaining children are also subject to the Flores Agreement, which is not discussed here or in the *Key Standards* document. *Flores v. Reno*, 507 U.S. 292, (1993).
- 7 Maria Trent, *Pelvic Inflammatory Disease*, 34 *Pediatric Rev.*, Apr. 2013.
- 8 Kira L. Gossack-Keenan et. al., *Toxic Shock Syndrome: Still a Timely Diagnosis*, *Pediatric Emergency Care*
- 9 Rasheed M. Salah et. al., *Bacterial Vaginosis and Infertility: Cause or Association?*, 167 *Eur. J. of Obstetrics & Gynecology and Reprod. Biology*, Mar. 2013.
- 10 U.S. IMMIGR. & CUSTOMS ENFORCEMENT, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 (2016).
- 11 This document strives to use gender-neutral language whenever possible. However, it maintains gendered language that was used by interviewees. In addition, most applicable laws, standards, and medical best practice statements we reference use gendered terminology when discussing reproductive health care and pregnancy. Where we are describing a law, a standard, or a best practice protocol, we use that terminology as well to be accurate in our description. Nonetheless, it is important for federal immigration authorities to write and enforce their policies in a way that ensures that all people who need pregnancy or other reproductive health care get the care they need and no one is denied care they need because of their gender identity or gender expression.
- 12 Gloria Verret, *Diaper Rash: The Bottom Line on Baby Bottoms*, *CHILD. HOSP. OF LA.*, <https://www.chla.org/blog/rn-remedies/diaper-rash-the-bottom-line-baby-bottoms> (last visited Oct. 14, 2020).
- 13 Division of Immig. Health Serv., *PEDIATRIC RN GUIDELINES (2008)*, <https://www.documentcloud.org/documents/6025538-DIHS-Pediatric-RN-Guidelines-Nov-2008.html>.
- 14 PBNDS 2011 section 2.6.V.B6 (Hold Rooms in Detention Facilities Expected Practices; Unprocessed Detainees).
- 15 TEDS section 4.11 (Secure Detention Standards; Hygiene).
- 16 CTR. FOR DISEASE CONTROL & PREVENTION, *About Breastfeeding*, <https://www.cdc.gov/breastfeeding/about-breastfeeding/index.html> (last visited Oct. 14, 2020); see also AM. ACAD. OF PEDIATRICS, *Breastfeeding & the Use of Human Milk* (Mar. 2012).
- 17 Am. Acad. of Pediatrics, *Infant Food and Feeding* (2019), <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/HALF-Implementation-Guide/Age-Specific-Content/Pages/Infant-Food-and-Feeding.aspx> (last visited Oct. 14, 2020).
- 18 PBNDS 2011 section 4.4V.B.1 [Medical Care (Women) Expected Practices; Initial Health Intake Screening and Health Assessment; Initial Screening].

- 19 Nat'l Commission on Correctional Health Care Board of Directors, *Position Statement: Breastfeeding in Correctional Settings* (April 2018).
- 20 J-F-05 Counseling and Care of the Pregnant Inmate, p 122
- 21 Interview with Y.B., Intake Coordinator of Border Kindness, in Mexicali, Mex. (Oct. 10, 2019) (on file with author).
- 22 Am. Acad. of Pediatrics, *Amount and Schedule of Formula Feedings* (Jul. 24, 2018), <https://www.healthychildren.org/English/ages-stages/baby/formula-feeding/Pages/Amount-and-Schedule-of-Formula-Feedings.aspx>.
- 23 See Fed Is Best, <https://fedisbest.org/> (last visited Oct. 14, 2020).
- 24 Flores is among them; however, this set of standards are not reviewed in this document. The Flores Settlement Agreement requires minors to be placed in the least restrictive setting appropriate to the child's age and special needs, provide notice of rights, safe and sanitary facilities, toilets and sinks, drinking water and food, medical assistance, temperature control, supervision, and contact with family members, among other requirements.
- 25 Flores, *supra* note 6.
- 26 U.S. IMMIGR. & CUSTOMS ENFORCEMENT, *supra* note 5, at 102.
- 27 U.S. CUSTOMS & BORDER PROTECTION, National Standards on Transport, Escort, Detention, and Search 22 (Oct. 2015).
- 28 NAT'L INST. OF HEALTH, *What are some common complications of pregnancy?* (Jan. 31, 2017).
- 29 UCSF Health, *High Risk Pregnancy*, <https://www.ucsfhealth.org/conditions/high-risk-pregnancy> (last visited Oct. 14, 2020).
- 30 Fan Qu et. al., *The Association between Psychological Stress and Miscarriage: A Systematic Review and Meta-Analysis*, 7 SCIENTIFIC REPORTS, May 11, 2017.
- 31 U.S. IMMIGR. & CUSTOMS ENFORCEMENT, *supra* note 5 at 323-324; U.S. CUSTOMS & BORDER PROTECTION, *supra* note 4 at 14.
- 32 TEDS section 5.1 (At-Risk Populations; General).
- 33 PBNDS 2011 section 4.4V.E [Medical Care (Women) Expected Practices; Initial Health Intake Screening and Health Assessment; Pregnancy].
- 34 Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019, 11:47 AM), <https://www.thedailybeast.com/immigrant-miscarriages-in-ice-detention-have-nearly-doubled-under-trump>
- 35 Email from Nicole Ramos, Legal Dir., Al Otro Lado, to Theresa H. Cheng, Reprod. Just. Dep't, ACLU of N. Cal. (Oct. 31, 2019, 10:50 PM PST) (on file with author).

# BARRIERS TO REPRODUCTIVE JUSTICE WHILE DETAINED: KEY STANDARDS

## INTRODUCTION

This Key Standards reference document accompanies the Barriers to Reproductive Justice While Detained report and highlights applicable requirements relating to reproductive health and the care of young children in immigration detention settings, as set out in U.S. Immigrations and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) standards.

The standards examined in this document are the 2015 Transport, Escort, Detention, and Search (TEDS), as applied to CBP facilities; the 2008 Performance-Based National Detention Standards (PBNDS), its 2011/2016 updates, and relevant<sup>1</sup> National Commission on Correctional Health Care (NCCHC) standards,<sup>2</sup> as applied to dedicated ICE facilities; and the 2000 National Detention Standards (NDS) and its 2019 update, as applied to non-dedicated ICE facilities.

The standards discussed in this reference document include access to menstruation-related hygiene products; access to diapers and formula; lactation accommodations; and pregnancy care, such as diet and medical care. This reference document is not meant to be an exhaustive resource, nor does it delve into other important issues, such as sexual assault or the unique challenges faced by transgender and nonbinary individuals in detention.

A note on gendered language: this toolkit often uses the term “woman” or “women,” which reflects the language of the standards discussed. Otherwise, this toolkit strives to use gender-neutral language whenever possible.

## BACKGROUND

The United States government reportedly maintains the largest immigration detention network in the world. As of September 2019, this network includes at least 37 U.S. Immigration and Customs Enforcement (ICE)-dedicated facilities and 186 ICE non-dedicated facilities, county and local jails that contract with ICE to confine individuals.<sup>3</sup> No reliable statistics have been released about the number of U.S. Customs and Border Protection (CBP) detention facilities in the country; these include both facilities at ports of entry and Border Patrol stations in the interior of the United States.

Each detention facility is subject to certain standards. Since October 2015, CBP has operated its detention facilities under the National Standards on Transport, Escort, Detention, and Search (TEDS).<sup>4</sup> But the standards to which a particular ICE detention center is subject to depends on numerous factors, thus muddying the legal landscape and enforceability of the standards. These factors include: which federal agency operates or contracts for the facility; the state in which the facility is located (and pertinent state laws); applicable case law; whether the facility is ICE-dedicated or not; and whether the facility is publicly or privately operated.

All federal facilities detaining minors are additionally bound by the 1997 Flores Settlement Agreement, which will not be discussed in this document.<sup>5</sup>

## □ STANDARDS FOR CUSTOMS AND BORDER PROTECTION (CBP) DETENTION FACILITIES

### National Standards on Transport, Escort, Detention, and Search (TEDS) 2015

CBP operates its detention facilities under the TEDS 2015 guidelines, which recognize numerous federal statutes and regulations binding CBP to certain standards of care.<sup>6</sup> These standards set out to establish a bare minimum of agency conduct.<sup>7</sup>

## ○ STANDARDS FOR IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) DEDICATED FACILITIES

### Performance-Based National Detention Standards (PBNDS)

The PBNDS standards, initially issued in 2008 and updated twice, govern ICE-dedicated detention facilities.

**2008 PBNDS.** Despite only mentioning female detainees three times, the 2008 PBNDS standards are the first standards to make explicit reference to the sexual assault and rape standards contained in the Prison Rape Elimination Act (PREA) of 2003.

**2011 PBNDS.** In the 2011 update, the PBNDS became the first detention standards to specifically address women's medical care, requiring facilities to provide gynecological and obstetrical health care in compliance with the NCCHC.<sup>8</sup>

**2016 PBNDS.** In the 2016 update, PREA was incorporated into the PBNDS, as was Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination based on disability and requires facilities to provide detainees with disabilities equal access to its programs and activities. Revisions also included improvement of communication protocols with detainees of limited English proficiency, the addition of the reporting requirement of pregnant detainees, and clarification of reporting and medical care timelines for detainees who may be pregnant or indicate a history of domestic abuse or violence.<sup>9</sup>



## **National Commission on Correctional Health Care (NCCHC) 2018**

NCCHC standards were created under the American Medical Association in the 1970s and are updated frequently. The most recent revisions were released in 2018. These standards are the recommended requirements for a carceral healthcare delivery system. They are explicitly folded into PBNDS 2011 and thus apply to ICE-dedicated facilities. In contrast, ICE no longer requires the non-dedicated facilities that are governed by the NDS to maintain accreditation with or follow the standards of the NCCHC.

## **⦿ STANDARDS FOR IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) NON-DEDICATED FACILITIES**

### **National Detention Standards (NDS)**

The NDS guidelines, initially issued in 2000 and updated in 2019, govern the treatment of people held by ICE in facilities that are not solely dedicated to ICE, such as local and state jails and prisons.

**NDS 2000.** A product of collaboration between the American Bar Association and the U.S. Department of Justice, the NDS 2000 was the first revision of the first set of standards on the treatment of persons in immigration detention, specifically under ICE.

**NDS 2019.** This updated set of guidelines no longer requires health care programs at these facilities to be under direction of a licensed physician, but does add new provisions for the prevention and intervention of sexual abuse and assault in detention, as required by PREA. It governs the treatment of immigrant detainees in almost 140 facilities in 44 states.

# ACCESS TO MENSTRUATION-RELATED HYGIENE PRODUCTS

## ▣ STANDARDS FOR CBP DETENTION FACILITIES

### TEDS

- ♦ Officers/Agents will consider the best interest of the juvenile at all decision points beginning at the first encounter and continuing through processing, detention, transfer, or repatriation.<sup>10</sup>
- ♦ Detainees must be provided with basic personal hygiene items . . . detainees using the restroom will have access to toiletry items, such as toilet paper and sanitary napkins.<sup>11</sup>
- ♦ Juveniles will be given access to basic hygiene articles, and clean bedding. When available, juveniles will be provided clean and dry clothing. Officers/ Agents may give access to these provisions to any juvenile at any time.<sup>12</sup>

## ○ STANDARDS FOR ICE-DEDICATED DETENTION FACILITIES

### PBNDS 2008

- ♦ Each detention facility shall have a written policy and procedures for the regular issuance and exchange of clothing, bedding, linens, towels, and personal hygiene items. The supply of these items shall exceed the minimum required for the number of detainees to prevent delay in replacing the items. To be prepared for unforeseen circumstances, it is good practice for a detention facility to maintain an excess clothing inventory that is at least 200 percent of the maximum funded detainee capacity. . . Clothing that is worn out, indelibly stained . . . should be discarded and replaced as soon as practicable.<sup>13</sup>
- ♦ Staff shall provide male and female detainees personal hygiene items appropriate for their gender and shall replenish supplies as needed. The distribution of hygiene items shall not be used as reward or punishment. . . Female detainees shall be issued and may retain feminine hygiene items as needed . . . the responsible housing unit officer shall replenish personal hygiene items on an as-needed basis, in accordance with written facility procedures.<sup>14</sup>
- ♦ Detainees shall be provided with clean clothing, linen, and towels on the following basis: a daily change of socks and undergarments. An additional exchange of undergarments shall be made available to detainees if necessary for health or sanitary reasons.<sup>15</sup>

## **PBNDS 2011 & 2016**

- ♦ Detainees shall be provided with basic personal hygiene items (e.g., water, disposable cups, soap, toilet paper, feminine-hygiene items, diapers, and sanitary wipes), as appropriate.<sup>16</sup>
- ♦ Female detainees shall be issued and may retain sufficient feminine hygiene items, including sanitary pads or tampons, for use during the menstrual cycle . . . The responsible housing unit officer shall replenish personal hygiene items on an as-needed basis, in accordance with written facility procedures. The facility administrator may establish an empty container exchange system.<sup>17</sup>
- ♦ Detainees shall be provided with clean clothing, linen, and towels on the following basis:
  - ♦ A daily change of socks and undergarments, an additional exchange of undergarments shall be made available to detainees if necessary for health or sanitation reasons.<sup>18</sup>

**NCCHC** --none--

## **⦿ STANDARDS FOR NON-DEDICATED ICE DETENTION FACILITIES**

### **NDS 2000**

- ♦ Detainees shall be provided with clean clothing, linen, and towels on a regular basis to ensure proper hygiene. Socks and undergarments will be exchanged daily, outer garments at least twice weekly, and sheets, towels, and pillowcases at least weekly.<sup>19</sup>

### **NDS 2019**

- ♦ During intake, detainees shall be given the opportunity to shower, where possible, and be issued clean institutional clothing, bedding, towels, and personal hygiene items.<sup>20</sup>
- ♦ Staff shall provide detainees with articles necessary for maintaining proper hygiene. The facility will replenish all hygiene supplies as needed at no cost to the detainee.<sup>21</sup>
- ♦ Detainees shall be provided with basic personal hygiene items, e.g., water, disposable cups, soap, toilet paper, feminine hygiene items, diapers, and sanitary wipes.<sup>22</sup>
- ♦ Good hygiene is essential to the well-being of detainees in the custody of ICE/ERO. ICE/ERO requires that all facilities provide detainees with regular exchanges of suitable and clean clothing, linens, blankets, and towels for as long as they remain in detention.

## **SPECIAL MANAGEMENT UNIT (SMU)**

- ♦ 2.9.II.O. (Special Management Units; Clothing and Personal Hygiene): Detainees in SMU may shave and shower at least three times weekly and receive other basic services—such as laundry, clothing, bedding, and linen—equivalent to general population detainees and consistent with safety and security of the facility. A detainee may be denied such items as clothing, mattress, bedding, or linens for medical or mental health reasons if his or her possession of such items raises concerns for detainee safety and/or facility security. All denials of such items shall be documented and justified.

## **DRY CELL**

- ♦ 2.7.II.D.3 (Searches of Detainees; Close Observation in a “Dry Cell”; Advising the Detainee): The supervisor responsible for initiating the dry cell placement shall advise the detainee of the conditions and what is expected and shall document the notification on an Administrative Segregation Order. The detainee shall be advised of the reasons he or she is being placed in a dry cell, the purpose of this placement, the conditions he or she can expect, and the means by which he or she can request items and services including, but not limited to, food and water, medical care, hygiene products, and bedpans. This information shall be communicated in a language or manner that the detainee understands.
- ♦ 2.7.II.D.4.e (Searches of Detainees; Close Observation in a “Dry Cell”; Conditions of Dry Cell Status): Personal hygiene items shall be provided as necessary and controlled by staff.

# ACCESS TO DIAPERS

## ▣ STANDARDS FOR CBP DETENTION FACILITIES

### TEDS

- ♦ Officers/Agents will consider the best interest of the juvenile at all decision points beginning at the first encounter and continuing through processing, detention, transfer, or repatriation.<sup>23</sup>
- ♦ Families with small children will also have access to diapers and baby wipes.<sup>24</sup>
- ♦ Individuals in the custody of CBP who may require additional care or oversight, who may include: juveniles; [Unaccompanied Minors]. . . CBP staff will treat all at-risk populations with dignity, respect, and special concern for their particular vulnerability.<sup>25</sup>

## ○ STANDARDS FOR ICE-DEDICATED DETENTION FACILITIES

PBNDS 2008 --none--

### PBNDS 2011 & 2016

- ♦ Detainees shall be provided with basic personal hygiene items (e.g., water, disposable cups, soap, toilet paper, feminine-hygiene items, diapers, and sanitary wipes), as appropriate.<sup>26</sup>

NCCHC --none--

## ◎ STANDARDS FOR NON-DEDICATED ICE DETENTION FACILITIES

NDS 2000 --none--

### NDS 2019

- ♦ Detainees shall be provided with basic personal hygiene items, e.g., water, disposable cups, soap, toilet paper, feminine hygiene items, diapers, and sanitary wipes.<sup>27</sup>

# LACTATION ACCOMMODATIONS AND SUPPORT

## ▣ STANDARDS FOR CBP DETENTION FACILITIES

### TEDS

#### *Breastfeeding Accommodations*

- ♦ Before placing any detainees together in a hold room or holding facility, officers/agents shall assess the information before them to determine if the detainee may be considered an at-risk detainee . . . This assessment will include: . . . Whether the detainee is pregnant or nursing.<sup>28</sup>
- ♦ Restroom accommodations will be available to all detainees and a reasonable amount of privacy will be ensured . . .<sup>29</sup>

### TEDS

#### *Access to Sufficient Formula*

- ♦ Nursing Mother and Children: in situations where a detained female is nursing, the child will not be removed from the care of the mother unless she poses a danger to the child or if she will be transferred to the custody of another agency for criminal prosecution.<sup>30</sup>

## ○ STANDARDS FOR ICE-DEDICATED DETENTION FACILITIES

#### *Breastfeeding Accommodations*

PBNDS 2008 --none--

#### PBNDS 2011

- ♦ The [initial health assessments of female detainees] shall inquire about the following: . . . if the detainee is currently nursing<sup>31</sup>

#### NCCHC

- ♦ Women should be informed of whether they have the option to breastfeed and/or express breast milk in the postpartum period . . . Appropriate nutrition and prenatal vitamins should be given to lactating women, and advice on symptom management for women who are not breastfeeding. Facilities should consider support for lactating mothers and those with breast engorgement who are not nursing.<sup>32</sup>

## *Access to Sufficient Formula*

**PBNDS 2008** --none--

### **PBNDS 2011 & 2016**

- ♦ Minors, pregnant women, and others with evident medical needs shall have access to snacks, milk, and juice.<sup>33</sup>

### **NCCHC**

- ♦ Special attention should be paid to the nutritional needs of adolescents, who generally require more calories and some micronutrients than adults, and may require more frequent meals or snacks. Proper nutrition for adolescents has long-term positive effects on physical and emotional development.<sup>34</sup>

## **Ⓞ STANDARDS FOR NON-DEDICATED ICE DETENTION FACILITIES**

### *Breastfeeding Accommodations*

**NDS 2000** --none--

### **NDS 2019**

- ♦ All initial health assessments of female detainees shall be conducted by a qualified health care practitioner. In addition to the criteria listed on the health assessment form, the evaluation shall inquire about and perform the following: . . . If the detainee is currently nursing (breastfeeding).<sup>35</sup>
- ♦ The facility administrator must notify ICE/ERO in writing as soon as possible, but no later than 72 hours, after the initial placement of a detainee in segregation if: . . . c. For the purposes of this standard, detainees with special vulnerabilities include those: . . . ii. Who have a disability or are elderly, pregnant, or nursing.<sup>36</sup>

## *Access to Sufficient Formula*

**NDS 2000** --none--

### **NDS 2019**

- ♦ Officers shall provide a meal to any adult in the hold room for more than six hours. Juveniles will receive meal service regardless of time in custody. Juveniles, babies, pregnant women, and others for whom it is medically necessary shall have regular access to snacks, milk, juice, etc.<sup>37</sup>

# PREGNANCY CARE

## ▣ STANDARDS FOR CBP DETENTION FACILITIES

### TEDS

- ♦ Before placing any detainees together in a hold room or holding facility, officers/agents shall assess the information before them to determine if the detainee may be considered an at-risk detainee . . . This assessment will include: . . . Whether the detainee is pregnant or nursing.<sup>38</sup>
- ♦ Juveniles and pregnant detainees will be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice.<sup>39</sup>

## ○ STANDARDS FOR ICE-DEDICATED DETENTION FACILITIES

### PBNDS 2008

- ♦ Initial medical, dental, and mental health screening shall be done within 12 hours of arrival by a health care provider or a detention officer specially trained to perform this function. . . The screening shall inquire into the following: . . . possibility of pregnancy.<sup>40</sup>

### PBNDS 2011 & 2016

- ♦ Female detainees shall receive routine, age appropriate gynecological and obstetrical health care, consistent with recognized community guidelines for women's health services. . .<sup>41</sup>
- ♦ A pregnant detainee in custody shall have access to pregnancy services including routine or specialized prenatal care, pregnancy testing, comprehensive counseling and assistance, postpartum follow up, lactation services, and abortion services.<sup>42</sup>
- ♦ Every facility shall directly or contractually provide its female detainees with access to: 1. Pregnancy services, including pregnancy testing, routine or specialized prenatal care, postpartum follow up, lactation services, and abortion services.<sup>43</sup>
- ♦ Within 12 hours of arrival, during their initial medical screening, all female detainees shall receive information on services related to women's health care.<sup>44</sup>
- ♦ All initial health assessments of female detainees shall be conducted by a trained and qualified health provider. In addition to the criteria listed on the health assessment form, the evaluation shall inquire about the following: a pregnancy testing for detainees aged 18-56 and documented results; if the detainee is currently nursing (breastfeeding); use of contraception.<sup>45</sup>



- ♦ Upon confirmation by medical personnel that a female detainee is pregnant, she shall be given close medical supervision. Pregnant detainees shall 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, abortion services, and parental skills education. . . . The medical provider will identify any special needs (e.g. diet, housing, or other accommodations such as the provision of additional pillows) and inform all necessary custody staff and facility authorities. If a pregnant detainee has been identified as high risk, the detainee shall be referred, as appropriate, to a physician specializing in high risk pregnancies.<sup>46</sup>

## NCCHC

- ♦ Inmates have access to care for their serious medical, dental, and mental health needs.<sup>47</sup>
  - Access to care means that, in a timely manner, a patient is seen by a qualified health care professional, is rendered a clinical judgment, and receives care that is ordered.<sup>48</sup>
- ♦ The facility provides the necessary on-site diagnostic services for patient care.<sup>49</sup>
  - Facilities have, at a minimum, multiple-test dipstick urinalysis . . . and in facilities housing women, pregnancy test kits.<sup>50</sup>
- ♦ A receiving screening takes place as soon as possible upon acceptance into custody. The receiving screening form is approved by the responsible health authority and inquires as to the inmate's: . . . l. Possible, current, or recent pregnancy.<sup>51</sup>
- ♦ Pregnant women who report bleeding or symptoms of labor such as pain or leaking fluid should be immediately evaluated by a qualified health care professional; when an appropriately trained health professional is not on-site, there should be consultation with or transportation to the hospital.<sup>52</sup>
- ♦ Diets [for pregnant detainees] should reflect national guidelines. When possible, additional food in between meal times should be provided as physiological changes and nausea may create a need for more frequent meals.<sup>53</sup>
- ♦ In addition, obstetrical emergencies such as hemorrhage, eclamptic seizures, and preterm labor can arise at any point in pregnancy. Such emergencies require immediate medical intervention and/or movement of the woman.<sup>54</sup>

## ◎ STANDARDS FOR NON-DEDICATED ICE DETENTION FACILITIES

### NDS 2000

- ♦ If a detainee requires emergency medical care, the officer will immediately take steps to contact a health care provider through established procedures. Where the officer is unsure whether emergency care is required, the officer should immediately notify the on-duty supervisor. If the on-duty supervisor has any doubt whether emergency care is required, the on-duty supervisor will immediately take steps to contact a health care provider, who will make the determination whether emergency care is required.<sup>55</sup>

### NDS 2019

- ♦ Juveniles, babies, pregnant women, and others for whom it is medically necessary shall have regular access to snacks, milk, juice, etc.<sup>56</sup>
- ♦ Upon confirmation by a health care practitioner that a detainee is pregnant, the detainee shall be provided close medical supervision. Pregnant detainees shall have access to prenatal and specialized care, and comprehensive counseling on topics including, but not limited to, nutrition, exercise, complications of pregnancy, prenatal vitamins, labor and delivery, postpartum care, lactation, family planning, abortion services, and parenting skills. The facility administrator shall ensure that ICE/ERO is notified as soon as practicable of any pregnant detainee, but no later than 72 hours after such determination. A health care practitioner will identify any special needs (e.g., diet, housing, and other accommodations such as the provision of additional pillows) and inform all necessary security staff and facility authorities. If a pregnant detainee has been identified as high risk, the detainee shall be referred to a physician specializing in high risk pregnancies.<sup>57</sup>
- ♦ Pregnant detainees may also have additional nutritional and caloric requirements.<sup>58</sup>
- ♦ Bunks, cots, beds, and other sleeping apparatus are not permitted inside hold rooms. Exceptions shall be made for detainees who are ill, and for minors and pregnant women.<sup>59</sup>

#### **SMU (Special Management Units)**

- ♦ 2.9.II.M.2 (Special Management Units; Health Care): Women who are pregnant, who are post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy should as a general matter not be placed in an SMU. In very rare situations, a woman who is pregnant, is postpartum, recently had a miscarriage, or recently had a terminated pregnancy may be placed in an SMU as a response to behavior that poses a serious and immediate risk of physical harm to self or others, or if the detainee has requested to be placed in protective custody administrative segregation and there are no more appropriate alternatives available. Even in such cases, this decision must be approved by a representative of the detention facility administration, in consultation with a medical professional, and must be reviewed every 48 hours.

## **A NOTE ON OTHER ISSUES OF CARE OF PREGNANT WOMEN**

For providers who are interested in standards that would apply to other aspects of care for pregnant detainees (e.g., use of restraints, abortion access, mental health), TEDS, PBNDS 2011 & 2016, and NDS 2019 contain explicit rules around these issues.<sup>60</sup> For example, NCCHC states that the use of restraints is potentially harmful to the pregnant woman and fetus.<sup>61</sup> Overall, NCCHC is the most detailed in highlighting a comprehensive approach to the medical screening and care of pregnant detainees.

# Endnotes

- 1 Per PBNDS 2011 section 4.4, “The facility’s provision of gynecological and obstetrical health care shall be in compliance with standards set by the National Commission on Correctional Health Care (NC-CHC).”
- 2 Nat’l Comm’n on Correctional Health Care, *Standards for Health Services in Jails* (2018).
- 3 See National Immigration Justice Center, *Immigration Detention Transparency Human Rights Project*, <https://immigrantjustice.org/issues/transparencyandhumanrights> (last visited Oct. 14, 2020).
- 4 U.S. CUSTOMS & BORDER PROTECTION, *National Standards on Transport, Escort, Detention, and Search* (Oct. 2015).
- 5 *Flores v. Reno*, 507 U.S. 292 (1993). For more information, see National Center for Youth Law’s case description. National Youth Law Center, *Flores v. Reno*, <https://youthlaw.org/case/flores-v-reno/> (last visited Oct. 14, 2020).
- 6 Per the TEDS document itself, the additional relevant authorities are: 19 U.S.C. §§ 482, 1461, 1581, 1582, 1589a; 8 C.F.R. §§ 232, 235, 236, & 287; 6 C.F.R. § 115; 79 F.R. 13100 (Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities); Immigration and Nationality Act (INA); Personal Search Handbook, CIS HB 3300-04B revised July 2004; Use of Force Policy, Guidelines and Procedures Handbook, HB 4500- 01C, revised May 2014; Motor Vehicle Management Handbook, HB 5200-14B, revised June 2014; Occupational Safety and Health Handbook, HB 5200-08B, revised September 2012; Secure Detention, Transport and Escort Procedures at Ports of Entry, 3340-030B, August 8, 2008; The Law of Arrest, Search, and Seizure Manual, M-69; Enforcement Standards – Body Searches, May 28, 1997; Hold Rooms and Short Term Custody, OBP 50/10.2-P; CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs, February 6, 2014; CBP Zero-Tolerance Policy, March 11, 2015.
- 7 According to a 2016 Government Accountability Office report, “[t]he TEDS policy is intended as a foundational document” to be supplemented with more detailed policies developed by CBP subcomponents.” It is not clear whether CBP has developed these detailed policies. See U.S. GOV’T ACCOUNTABILITY OFF., GAO16-514, IMMIGRATION DETENTION: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN DHS MANAGEMENT OF SHORT-TERM HOLDING FACILITIES 9 n.14 (MAY 2016), <https://bit.ly/2xhYBMc>.
- 8 PBNDS 2011 section 4.4 [Medical Care (Women)].
- 9 U.S. IMMIGR. & CUSTOMS ENFORCEMENT, ICE DIRECTIVE 11032.3: IDENTIFICATION AND MONITORING OF PREGNANT DETAINEES (Dec. 2017).
- 10 TEDS section 1.6 (General Standards; Treatment of Juveniles).
- 11 TEDS section 4.11 (Hygiene).
- 12 TEDS section 5.6 (Hygiene articles, bedding and clean clothing; Juveniles).
- 13 PBNDS 2008 section 4.23V.A (Supply of Clothing, Bedding, Linen, Towel, and Personal Hygiene Items).
- 14 PBNDS 2008 section 4.23V.D (Personal Hygiene Items).
- 15 PBNDS 2008 section 4.23V.H. (Exchange Requirements).
- 16 PBNDS 2011 section 2.6V.B6 (Hold Rooms in Detention Facilities Expected Practices; Unprocessed Detainees).
- 17 PBNDS 2011 section 4.5V.D (Personal Hygiene Expected Practices; Personal Hygiene Items).
- 18 PBNDS 2011 section 4.5V.H (Personal Hygiene Expected Practices; Exchange Requirements).
- 19 NDS section III.E (Issuance and Exchange of Clothing, Bedding and Towels; Exchange Requirements).
- 20 NDS 2019 section 2.1B (Admission and Release; Search of Detainee and Property).
- 21 NDS 2019 section 2.1E (Admission and Release; Personal Hygiene Items).
- 22 NDS 2019 section 2.5B.7 (Hold Rooms in Detention Facilities; Time Limits and Restrictions).
- 23 TEDS section 1.6 (General Standards; Treatment of Juveniles).
- 24 TEDS section 4.11 (Secure Detention Standards; Hygiene).
- 25 TEDS section 5.1 (At-Risk Populations; General).

- 26 PBNDS 2011 section 2.6.V.B6 (Hold Rooms in Detention Facilities Expected Practices; Unprocessed Detainees).
- 27 NDS 2019 section 2.5B.7 (Hold Rooms in Detention Facilities; Time Limits and Restrictions).
- 28 TEDS section 4.2 (Secure Detention Standards; At-Risk Detainee Determination Process).
- 29 TEDS section 4.15 (Secure Detention Standards; Restroom Facilities).
- 30 TEDS section 5.6 (At-Risk Populations; Detention).
- 31 PBNDS 2011 section 4.4V.B.1 [Medical Care (Women) Expected Practices; Initial Health Intake Screening and Health Assessment; Initial Screening].
- 32 NCCHC 2018 section J.F.05 (Counseling and Care of the Pregnant Inmate).
- 33 PBNDS 2011 section 2.6V.D.3c. (Hold Rooms in Detention Facilities Expected Practices; Basic Operational Procedures; Meals).
- 34 NCCHC 2018 section J.D.05 (Medical Diets).
- 35 NDS 2019 section 4.3.II.U.1.b (Medical Care; Women’s Medical Care; Initial Assessment).
- 36 NDS 2019 section 2.9.II.C.2.c.ii (Special Management Units; Notifying ICE/ERO of Segregation Placements and Facilitating ICE/ERO Review; Immediate Notifications).
- 37 NDS 2019 section 2.5.II.D.3 (Hold Rooms in Detention Facilities; Basic Operational Procedures).
- 38 TEDS section 4.2 (At-Risk Detainee Determination Process).
- 39 TEDS section 5.6 (At-Risk Populations Detention).
- 40 PBNDS 2008 section 22.5.I.1 (Medical Care Expected Practices; Medical Screening of New Arrivals; Medical Screening).
- 41 PBNDS 2011 section 4.4II.1 [Medical Care (Women) Expected Outcomes].
- 42 PBNDS 2011 section 4.4II.3 [Medical Care (Women) Expected Outcomes].
- 43 PBNDS 2011 section 4.4V.A1 [Medical Care (Women) Expected Practices; Overview].
- 44 PBNDS 2011 section 4.4V.B1 [Medical Care (Women) Expected Practices; Initial Health Intake Screening and Health Assessment; Initial Screening].
- 45 PBNDS 2011 section 4.4V.B6 [Medical Care (Women) Expected Practices; Initial Health Intake Screening and Health Assessment; Initial Health Assessment].
- 46 PBNDS 2011 section 4.4V.E [Medical Care (Women) Expected Practices; Initial Health Intake Screening and Health Assessment; Pregnancy].
- 47 NCCHC 2018 section J.A.01 (Access to Care).
- 48 *Id.*
- 49 NCCHC 2018 section J.D.04 (On-Site Diagnostic Services).
- 50 *Id.*
- 51 NCCHC 2018 section J.E.02 (Receiving Screening).
- 52 NCCHC 2018 section J.F.05 (Counseling and Care of the Pregnant Inmate).
- 53 *Id.*
- 54 *Id.*
- 55 NDS 2000 section Medical Care III.D. [Standards and Procedures; Medical Screening (New Arrivals)].
- 56 NDS 2019 section 2.5.II.D.3 (Hold Rooms in Detention Facilities; Basic Operational Procedures).
- 57 NDS 2019 section 4.3.II.U.3 (Medical Care; Women’s Medical Care; Pregnancy).
- 58 NDS 2019 section 4.1.II.G.1 (Food Service; Medical Diets; Therapeutic Diets).
- 59 NDS 2019 section 2.5.II.A.5 (Hold Rooms in Detention Facilities; Physical Conditions).
- 60 NCCHC, *supra* note 32; TEDS section 5.7 (At-Risk Populations; Use of Restraints); PBNDS section 4.4[Medical Care (Women)].
- 61 NCCHC, *supra* note 32.