

2022

Unrepeatable Harms: Forced Sterilization at ICE Detention Centers

Sabrina Davis

American University Washington College of Law

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#)

Recommended Citation

Davis, Sabrina (2022) "Unrepeatable Harms: Forced Sterilization at ICE Detention Centers," *Human Rights Brief*. Vol. 25: Iss. 2, Article 15.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol25/iss2/15>

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

UNREPEATABLE HARMS: FORCED STERILIZATION AT ICE DETENTION CENTERS

by Sabrina Davis*

INTRODUCTION

In September 2020, news broke that the U.S. Immigration and Customs Enforcement (ICE) performed forced sterilizations on detained migrant women at the Irwin County Detention Center (ICDC) in Ocilla, Georgia.¹ The forced sterilizations arose within the context of the Trump Administration's harsh

* Sabrina Davis is a current 2L at American University Washington College of Law, where she currently is a Deputy Editor for the *Human Rights Brief*, and a Publications Editor for the *Journal of Gender, Social Policy and the Law*. She is a first generation lawyer, who is interested in civil rights work, with a current focus in immigration and criminal defense work.

¹ Eesha Pandit, *The Many Abuses at the Irwin County Detention Center in Georgia*, *NATION* (Oct. 30, 2020), <https://www.thenation.com/article/society/hysterectomies-sterilization-irwin-county/> (noting that this detention center, run by La Salle Corrections is a private government contractor for the Department of Homeland Security and ICE, and tasked with running detention facilities. La Salle Corrections currently operates nineteen facilities, including ICDC).

anti-migrant policies² and the United States' sordid history of forcibly sterilizing minority groups.³ This Article will examine how forced sterilizations against migrants are part of a broader systematic medical crisis in immigration detention centers including, a lack of consent to treatment, accessibility to treatments, and, at times, death.⁴ However, by performing forced sterilizations on detained migrant women, the United States is violating its obligations under the Convention Against Torture and the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules).⁵

I. BACKGROUND

While there are widespread reports of reproductive injustice against persons detained in ICE facilities, specific evidence that ICE personnel were performing

² Zolan Kanno-Youngs & Michael D. Shear, *Trump Virtually Cuts Off Refugees as He Unleashes a Tirade on Immigrants*, *N.Y. TIMES* (Oct. 1, 2020), <https://www.nytimes.com/2020/10/01/us/politics/trump-refugees.html>; see also U.S. IMMIGR. & CUSTOMS ENF'T, *NATIONAL DETENTION STANDARDS (NDS) FOR NON-DEDICATED FACILITIES* (2019), <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>

³ See *Madrigal v. Quilligan*, 639 F.2d 789 (9th Cir. 1978); Amy Jean-Jacques & Sam Rowlands, *Legalized Non-Consensual Sterilization: Eugenics Put into Practice Before 1945 and the Aftermath (Part 1)*, 23 *EUR. J. CONTRACEPTIVE REPROD. HEALTH CARE* 121, 127–30, 132–34 (2018); Irin Camron, *For Eugenic Sterilization Victims, Belated Justice*, *MSNBC* (June 27, 2014), <https://www.msnbc.com/all/eugenic-sterilization-victims-belated-justice-msna358381>.

⁴ Nick Miroff, *Immigrant Detainees Get Poor Medical Care, Face Retaliation for Speaking Out, According to Democrat-led Report*, *WASH. POST* (Sept. 21, 2020), https://www.washingtonpost.com/immigration/ice-detainees-health-care-report/2020/09/21/270a64f4-fc1e-11ea-830c-a160b-331ca62_story.html; *Detention: A Death Sentence?*, *FREEDOM FOR IMMIGRANTS* (2018), <https://www.freedomforimmigrants.org/medical-neglect>; Ashoka Mukpo, *"They Don't Care if You Die": Immigrants in ICE Detention Fear the Spread of Covid-19*, *ACLU* (Apr. 8, 2020), <https://www.aclu.org/news/immigrants-rights/they-dont-care-if-you-die-immigrants-in-ice-detention-fear-the-spread-of-covid-19/>.

⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]; G.A. Res. 70/175, *The Nelson Mandela Rules* (Jan. 8, 2016) [hereinafter Nelson Mandela Rules].

forced sterilizations on migrant women came from the ICDC facility, operated by LaSalle Corrections.⁶ Dawn Wooten a nurse at the facility, exposed this practice when she filed a complaint about doctors performing a large number of hysterectomies on patients without their consent.⁷ Her complaint is corroborated by multiple migrant women, some of whom remained in the facility until May 2021, when all women were removed from the facility.⁸ Dr. Mahendra Amin, a facility doctor, performed the majority of the forced sterilizations and was known by nurses as the “Uterus Collector” due to his pattern of behavior.⁹ Dr. Amin performed these hysterectomies by inaccurately explaining the procedure to the patients, not explaining the procedure to the patient

⁶ Pandit, *supra* note 1. For widespread reports, see Letter from the ACLU et al., to Cameron Quinn, Office for Civil Rights and Liberties, Department of Homeland Security & John Roth, Inspector General, Department of Homeland Security, Re: U.S. Immigration and Customs Enforcement’s Detention and Treatment of Pregnant Women (Nov. 13, 2017); Nora Ellmann, *Immigration Detention is Dangerous for Women’s Health and Rights*, CTR. FOR AM. PROGRESS (Oct. 21, 2019), <https://www.americanprogress.org/article/immigration-detention-dangerous-womens-health-rights/>; ACLU of California, *Barriers to Reproductive Justice While Detained* (2020); Brittany R. Leach, *At the Borders of the Body Politic: Fetal Citizens, Pregnant Migrants, and Reproductive Injustices in Immigration Detention*, 116 AM. POL. SCI. REV. 116 (2022).

⁷ Pandit, *supra* note 1.

⁸ Molly O’Toole, *19 Women Allege Medical Abuse in Georgia Immigration Detention*, L.A. TIMES (Oct. 23, 2020), <https://www.latimes.com/politics/story/2020-10-22/women-allege-medical-abuse-georgia-immigration-detention>; Charles R. Davis, *ICE Transfers Women Out of Detention Center That Became Infamous Over Allegations of Forced Sterilization*, BUS. INSIDER (May 3, 2021, 2:29 PM), <https://www.businessinsider.com/ices-irwin-county-detention-center-transfers-remaining-women-lawyer-says-2021-4>.

⁹ Pandit, *supra* note 1; see also Margot Harris, *The Physician Accused of Performing Unwanted Hysterectomies in an ICE Detention Center Is Not a Board-Certified OB-GYN*, BUS. INSIDER (Sept. 19, 2020, 12:28 PM), <https://www.businessinsider.com/ice-doctor-performing-hysterectomies-is-not-board-certified-2020-9>.

in their native language, or by not explaining the procedure at all.¹⁰ Statements from surviving women demonstrate that they never consented to the procedure, and most women did not know their uterus had been removed until they woke up after surgery.¹¹ ICE, Dr. Amin, and the LaSalle Corrections facility have continued to deny all allegations of forced sterilizations against migrant women.¹²

The United States has an abhorrent history of forced sterilization. Throughout the country’s history, it has used forced sterilizations to control “undesirable populations,” consisting of non-white, physically disabled, and mentally ill individuals.¹³ Particularly relevant to the forcible sterilization of migrant women, the United States has continually practiced reproductive coercion and experimental procedures on both Latinx women.¹⁴ However, the United States now condemns other countries that engage in forced sterilization.

¹⁰ *Id.*; see Jasmine Aguilera, *More Than 40 Women File Class Action Lawsuit Alleging Medical Misconduct by ICE Doctor at Georgia Detention Center*, TIME (Dec. 22, 2020), <https://time.com/5924021/women-lawsuit-irwin-detention-ice/>; O’Toole, *supra* note 8.

¹¹ O’Toole, *supra* note 8.

¹² Aguilera, *supra* note 10.

¹³ Jacques & Rowland, *supra* note 3 at 132–34; see *Buck v. Bell*, 274 U.S. 200 (1927) (holding that someone mentally disabled had no right against forced sterilization). *But cf. Skinner v. Oklahoma*, 316 U.S. 535 (1942) (holding a petty criminal does have a constitutional right against forced sterilization). The author notes that these groups were subject to forcible sterilization all throughout history, but particularly starting with eugenics research in the early 1900’s. See generally Inka Sklodowska Boehm, Comment, *Punishment and Prejudice: Reproductive Coercion in Immigration and Customs Enforcement Detention Centers* 29 AM. U. J. GENDER, SOC. POL’Y & L. 530, 534 (2022) (describing the impact of reproductive coercion in the civil immigration context and arguing that the Eighth Amendment should apply to detainees who experienced reproductive coercion).

¹⁴ See Boehm, *supra* note 13, at 531 (defining reproductive coercion as “involving behaviors that manipulate, impede, and interfere with an individual’s control over their reproductive health-related decisions.”); *id.* at 533 (discussing how Puerto Rican women were given the first oral contraceptive pill without discussing the risks, how Latinx women were given hysterectomies when they had minimal indications of gynecological problems, and how reproductive coercion routinely happened to women of color throughout U.S. history).

Most recently, the United States sanctioned China for using forced sterilizations against Uyghur people despite its own role in the recent forced sterilizations of immigrant women.¹⁵ Because forced sterilizations have been recognized as torture, a prohibition of the torturous practice is considered a *jus cogens* norm.¹⁶ Therefore, states must adhere to the prohibition, regardless of their consent.¹⁷ Nonetheless, as demonstrated by the United States and China, many states still partake in the horrific practice.¹⁸

II. ANALYSIS

The United States signed the Convention against Torture on April 18, 1988, and ratified the Convention on October 21, 1994.¹⁹ Although the Convention is binding on the United States, the Senate issued certain declarations, reservations, and understandings that affect the United States' implementation of the Convention.²⁰ A major reservation was declaring

¹⁵ Connor Finnegan, *US Sanctions Chinese Officials over Uyghur Abuses*, ABC NEWS (July 9, 2020), <https://abcnews.go.com/Politics/us-sanctions-chinese-officials-uighur-abuses/story?id=71693965>.

¹⁶ See Ronli Sifris, *Conceptualizing Involuntary Sterilization as "Severe Pain or Suffering" for the Purposes of Torture Discourse*, 28 NETHERLANDS Q. HUM. RTS. 523, 528 (2010) (analogizing that because forced sterilization has been recognized as torture, the *jus cogens* norm against torture applies to forced sterilizations); see generally *Forced Sterilization As A Human Rights Violation: Recent Developments*, INT'L JUST. RES. CTR. (Mar. 21, 2019), <https://ijrcenter.org/2019/03/21/forced-sterilization-as-a-human-rights-violation-recent-developments/>.

¹⁷ J. Brock McClane, *How Late in the Emergence of a Norm of Customary International Law May a Persistent Objector Object?*, 13 ILSA J. INT'L L. 1, 13 (1989).

¹⁸ James Waller & Mariana Salazar Albornoz, *Crime and No Punishment? China's Abuses Against the Uyghurs*, 22 GEO. J. INT'L AFFS. 150 (2021) (analyzing China's continued genocide of Uyghur Muslims despite the *jus cogens* norm against forced sterilization); Maya Manian, *Immigration Detention and Coerced Sterilization: History Tragically Repeats Itself*, ACLU (Sept. 29, 2020), <https://www.aclu.org/news/immigrants-rights/immigration-detention-and-coerced-sterilization-history-tragically-repeats-itself/>.

¹⁹ CAT, *supra* note 5; Senate Consideration of Treaty Document 100-20 (Oct. 27, 1990).

²⁰ See Senate Consideration of Treaty Document 100-20 (Oct. 27, 1990).

that the Convention is not self-executing, and therefore requires domestic implementing legislation.²¹ Another reservation was regarding the understanding of Article 1, which defines torture for purposes of the Convention.²² Under the United States' reservation, torture must be "an act specifically intended to inflict severe physical or mental pain and suffering," and is intended to only apply to acts directed against individuals who are in custody or under physical control.²³ Domestic implementing legislation allows for migrants to bring suit against the United States for suffering physical or mental harm at the hands of federal officers.²⁴ Crimes or treatment purported by immigration officials fall within this statute as well, potentially giving those in detention facilities a right to action.²⁵

The practice of forced sterilization has been recognized as torture, and it matches the United States' definition of torture for the Convention.²⁶ The migrant women were held in the custody of the Department of Homeland Security.²⁷ However, Dr. Amin, was not a government official or agent, but rather was an independent doctor contracted to work at the facility. This, however, does not mean that the Convention Against Torture does not apply.²⁸ DHS

²¹ See *id.*; see also 18 U.S.C. § 2340 (implementing CAT Art. I into U.S. domestic law); 28 U.S.C. § 1346(b) (giving migrants a right to action against the United States for

²² See 18 U.S.C. § 2340 (defining the United States' understanding of the definition of torture for CAT).

²³ *Id.*

²⁴ See 28 U.S.C. § 1346(b)(1); 28 U.S.C. § 2680(h).

²⁵ 8 U.S.C. § 1357; see also *Sandoval v. United States*, 980 F.2d 1057, 1059 (5th Cir. 1993) (holding that the federal government can still hold liability based on the negligent acts of contractors/Government employees in placing a detained person in the care of a contractor).

²⁶ See Sifris, *supra* note 16 (stating that forced sterilization is internationally recognized as torture).

²⁷ See *Detention Management*, U.S. IMMIGR. & CUSTOMS ENFT, <https://www.ice.gov/detain/detention-management> (last visited Apr. 17, 2022) (stating that ICE detainees are placed in ERO *custody* in the nation's civil immigration detention system). For a more thorough analysis, see *infra* (discussing how migrants are treated as prisoners within the U.S. despite solely being held in civil custody).

²⁸ *Sandoval*, 980 F.2d at 1059.

negligently placed these women in the hands of Dr. Amin, who was not a board-certified gynecologist, and previously was the subject of at least two different lawsuits alleging medical neglect.²⁹ Therefore, DHS and the United States government are still liable for violating the Convention Against Torture. To match the definition of torture, the forced sterilizations must have been intended to inflict severe physical suffering.³⁰ Evidence from the complaint shows that hysterectomies were performed on almost every patient of Dr. Amin, despite these procedures being medically unnecessary.³¹ If these procedures were not medically necessary, the only other reason to perform forced sterilization would be to cause severe physical or mental suffering. Because the forced sterilizations were the result of government negligence at the hands of a government contractor and were performed to induce physical and mental suffering, the Convention Against Torture clearly applies. By allowing this practice to occur, the United States has violated its obligation under the Convention and has broken its promise to uphold fundamental human rights.

The Mandela Rules were adopted by the UN General Assembly, in 2015.³² The Rules are soft law, meaning they are non-binding on member states; however, they have been accepted as internationally recognized minimum standards.³³ While the United States has not codified the Mandela Rules in its domestic law, ICE has developed a set of Performance Based

National Detention Standards (PBNDS) that are implemented in every detention facility.³⁴ Last updated in 2016, parts of the PBNDS are directly comparable to parts of the Mandela Rules.³⁵ Mandela Rules 32(1)(b) and 32(1)(d) specifically apply to the practice of forced sterilization.³⁶ Rule 32(1)(b) incorporates the right of prisoners to bodily autonomy with regards to their health and informed consent.³⁷ Rule 32(1)(d) contains an absolute prohibition on engaging in acts that may constitute torture, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's organs.³⁸ Section 4.3(D) of the PBNDS correlates to these rules, and states that informed consent must be obtained prior to providing any kind of medical treatment, and that consent forms, translated with language assistance if needed, will be signed and placed in the medical file.³⁹ Section D additionally prohibits forced treatment.⁴⁰ This correlates both to the stipulation in 32(1)(b) of the Mandela Rules that detainees have autonomy with their own health and shall have informed consent, as well as 32(1)(d), which prohibits acts constituting torture.⁴¹ However, the PBNDS do not contain any language prohibiting acts of torture by ICE personnel.⁴² This is a key component of the Mandela Rules and a major indication

²⁹ Davis, *supra* note 8.

³⁰ See Sifris, *supra* note 16 (arguing that without medical justification, forced sterilizations and reproductive coercion is a form of torture and a violation of human rights).

³¹ See Pandit, *supra* note 1.

³² Nelson Mandela Rules, *supra* note 5. The 2015 Mandela Rules, supersede the 1955 Standard Minimum Rules for the Treatment of Prisoners but are largely based off this framework.

³³ See *id.* ("...aware that Standard Minimum Rules for the Treatment of Prisoners have been the universally acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence, as a guide, in the development of correctional laws, policies and practices since their adoption by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1955.").

³⁴ U.S. IMMIGR. & CUSTOMS ENF'T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS § 4.3(D), at 264 (2011) [hereinafter PBNDS].

³⁵ Compare *id.* (stating that individuals in detention shall be afforded certain rights, including the right to medical care, safe and sanitary conditions, and free from retaliatory punishment), with Nelson Mandela Rules, *supra* note 5 (noting the similarities in the idea of both instruments, particularly in regard to medical, legal, and religious subjects).

³⁶ Nelson Mandela Rules, *supra* note 5, at Rule 32.

³⁷ *Id.* at Rule 32(1)(b).

³⁸ *Id.* at Rule 32(1)(d).

³⁹ PBNDS, *supra* note 34, § 4.3(D) at 264.

⁴⁰ *Id.*

⁴¹ Nelson Mandela Rules, *supra* note 5.

⁴² PBNDS, *supra* note 34, at 241.

that ICE itself did not intend to follow or be bound by the Mandela Rules.⁴³

However, on a state-by-state basis, the United States has slowly started implementing the Mandela Rules in legislation regarding prison facilities.⁴⁴ Additionally, one of President Biden's campaign promises was to ensure humane prison conditions, codifying many of the Mandela Rules into domestic law.⁴⁵ Because the United States is in the General Assembly to the UN and must adhere to its general policy principles, and because the implementation of the Rules and the jus cogens norms are occurring, ICE is bound by the Mandela Rules. Additionally, the similarities between the two instruments mean that for the limited application of forced sterilization at ICE detention centers in the United States, the PBNDS renders the Mandela Rules enforceable.

Based on its voluntary adoption of standards for detention centers, which directly correlate to the Mandela Rules, the United States is violating its comment to uphold the principles enshrined in the Mandela Rules. ICE broke Rules 32(1)(b) and (d) and PBNDS Section D by not obtaining informed consent of the immigrant women before performing surgery, not adequately explaining the procedure in their native language before obtaining consent, and the serious harm and forced treatment of the sterilizations. These events are corroborated first-hand not only by whis-

⁴³ See *ICE Detention Standards*, U.S. IMMIGR. & CUSTOMS ENF'T (Nov. 9, 2021), <https://www.ice.gov/factsheets/facilities-pbnbs> (listing the reasons for the updated PBNDS in 2016 as to ensure consistency with *federal* legal and regulatory requirements as well as prior ICE policies and statements [emphasis added] which shows that ICE is only tailoring their standards to federal minimum standards of conduct for civil detention).

⁴⁴ See *Senate Passes the 'HALT' Solitary Confinement Act*, N.Y. ST. SEN. (Mar. 18, 2021), <https://www.nysenate.gov/newsroom/press-releases/senate-passes-halt-solitary-confinement-act>.

⁴⁵ Keri Blakinger, *Biden Has Disappointed Many Prisoners and Guards. Now He Has a Chance to do More*, MARSHALL PROJECT (Jan. 13, 2022, 12:30 PM), <https://www.themarshallproject.org/2022/01/13/biden-has-disappointed-many-prisoners-and-guards-now-he-has-a-chance-to-do-more> (denoting President Biden's campaign promises, and the lack of implementation regarding prison conditions).

tleblower Dawn Wooten⁴⁶ but also by women subjected to sterilizations.⁴⁷ There has been a clear violation of the international obligation under these rules and of a domestic obligation under the PBNDS. It is possible that the government will argue that the Mandela Rules do not apply, as the migrant women were not categorically defined as prisoners by statute. However, the treatment of migrants by the Trump Administration and ICE show that the government considered them to be prisoners.⁴⁸

In President Trump's first year in office, his administration drastically increased contracts with private prisons to serve as detention centers.⁴⁹ Private prison corporations profit off of housing migrants who have been detained, which contributes to the overcrowding of migrants in prison facilities.⁵⁰ Despite a Department of Homeland Security report describing squalid

⁴⁶ Pandit, *supra* note 1.

⁴⁷ O'Toole, *supra* note 8.

⁴⁸ Brian Stauffer, "Do You See How Much I'm Suffering Here?": Abuse against Transgender Women in US Immigration Detention, HUM. RTS. WATCH (Mar. 23, 2016), <https://www.hrw.org/report/2016/03/24/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us>; *Solitary Confinement at the Northwest Detention Center*, UNIV. WASH. CTR. HUM. RTS., (Nov. 30, 2020), <https://jsis.washington.edu/humanrights/2020/11/30/nwdc-solitary/>; Ansly Damus, *Locked Up as Punishment for Seeking Safety*, ACLU (Mar. 22, 2018), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/locked-punishment-seeking-safety>.

⁴⁹ See Lauren-Brooke Eisen, *Trump's First Year Has Been the Private Prison Industry's Best*, SALON (Jan. 14, 2018), <https://www.salon.com/2018/01/14/trumps-first-year-has-been-the-private-prison-industrys-best/>; Monsy Alvarado, et al., *These People Are Profitable: Under Trump, Private Prisons Are Cash-ing In on ICE Detainees*, USA TODAY (Apr. 23, 2020), <https://www.usatoday.com/in-depth/news/nation/2019/12/19/ice-detention-private-prisons-expands-under-trump-administration/4393366002/>; Hauwa Ahmed, *How the Private Prisons Are Profiting Under the Trump Administration*, CTR. FOR AM. PROGRESS (Aug. 30, 2019), <https://www.american-progress.org/issues/democracy/reports/2019/08/30/473966/private-prisons-profiting-trump-administration/> (containing an overview of how the private prison industry has moved further into the immigration field under the Trump Administration).

⁵⁰ See Monsy Alvarado et al., *supra* note 32 (In 2020, ICE paid the Jackson Parish Correctional Facility, operated by La Salle Corrections \$74.35 per day for each migrant they housed).

and overcrowded conditions at detention centers operated by ICE and Border and Customs Patrol, former President Trump and his Administration dismissed any claims of wrongdoing.⁵¹ They repeatedly blamed horrific conditions on migrants coming to the U.S. and saw no problems with overcrowding, denial of legal services, or unreasonable periods of detention.⁵² Many detention centers enroll migrants in voluntary work programs, where migrants work for less than one dollar a day.⁵³ Furthermore, solitary

confinement is used for extended periods of time, without proper protections or tracking from ICE.⁵⁴ Detention centers are often recognized as worse than prison, as migrants have no constitutional protections, and ICE provides little transparency.⁵⁵ These examples show that the treatment of migrants goes beyond the standard of civil detention.⁵⁶ Migrants are treated akin to those incarcerated in the criminal legal system, and are given no additional protections or privileges, despite typically only committing a civil infraction.

III. RECOMMENDATIONS

The women who have been forcibly sterilized at the hands of ICE personnel have very little recourse available to them. Although they would be able to show that the United States is in violation of its PBNDS and the Mandela Rules, it is unlikely that the Standards or the Mandela Rules would be enforced by any court or federal agency. These women could have filed a formal grievance process within ICE or filed an official

⁵¹ See U.S. DEP'T OF HOMELAND SEC., OFF. INSPECTOR GEN., OIG-19-51, MANAGEMENT ALERT—DHS NEEDS TO ADDRESS DANGEROUS OVERCROWDING AND PROLONGED DETENTION OF CHILDREN AND ADULTS IN THE RIO GRANDE VALLEY (REDACTED) (July 2, 2019); Brett Samuels, *Trump Dismissed Furor Over Conditions for Migrants*, HILL (July 3, 2019 4:11 PM), <https://thehill.com/homenews/administration/451614-trump-dismisses-furor-over-conditions-for-migrants> (reporting on President Trump's response to the report and allegations of mistreatment).

⁵² Donald Trump (@realDonaldTrump), TWITTER (July 3, 2019), https://twitter.com/realDonaldTrump/status/1146514575048790019?ref_src=twsrc%5Etfw (“If Illegal Immigrants are unhappy with the conditions in the quickly built or refitted detention centers, just tell them not to come. All problems solved!”); Emma Winger & Eunice Cho, *ICE Makes it Impossible for Immigrants in Detention to Contact Lawyers*, ACLU (Oct. 29, 2021) <https://www.aclu.org/news/immigrants-rights/ice-makes-it-impossible-for-immigrants-in-detention-to-contact-lawyers/> (ICE detention facilities have restricted the most basic forms of communication towards detained migrants); Maria Sacchetti, *ICE Holds Growing Numbers of Immigrants at Private Facilities Despite Biden Campaign Promise to End Practice*, WASH. POST (Dec. 1, 2021 6:26 PM), <https://www.washingtonpost.com/national-security/2021/12/01/ice-country-jails-migrants/> (The average detainee's length of stay is 43 days, but agency data shows some have been in detention for months or years).

⁵³ Mia Steinle, *Slave Labor Widespread at ICE Detention Centers, Lawyers Say*, PROJECT ON GOV'T OVERSIGHT (Sept. 17, 2017), <https://www.pogo.org/investigation/2017/09/slave-labor-widespread-at-ice-detention-centers-lawyers-say/>; Katy Murdza, *Thousands in ICE Detention Sue Private Prison Company for Forced Labor*, IMMIGR. IMPACT (Dec. 16, 2019), <https://immigrationimpact.com/2019/12/16/ice-private-prison-forced-labor-lawsuit/#.YiJZ5y-B2Rs>; Jacqueline Stevens, *Biden Administration ICE Contracts Encourage Forced Labor*, AM. PROSPECT (June 1, 2021), <https://prospect.org/justice/biden-administration-ice-contracts-encourage-forced-labor/>.

⁵⁴ Geneva Sands, *ICE Doesn't Adequately Track Solitary Confinement in Detention Facilities, Watchdog Finds*, CNN (Oct. 15, 2021 6:05 PM), <https://www.cnn.com/2021/10/15/politics/ice-solitary-confinement-detention-watchdog/index.html>; Patrick Taurel, *Internal Watchdog Finds ICE Violations of Solitary Confinement Policy*, ACLU (Oct. 21, 2021), <https://www.aclu.org/news/immigrants-rights/internal-watchdog-finds-ice-violations-of-solitary-confinement-policy/>; Ian Urbina, *The Capricious Use of Solitary Confinement Against Detained Immigrants*, ATLANTIC (Sept. 6, 2019), <https://www.theatlantic.com/politics/archive/2019/09/ice-uses-solitary-confinement-among-detained-immigrants/597433/>.

⁵⁵ See Boehm, *supra* note 13, at 547 (arguing that detention centers resemble prisons and criminal incarceration); see also Stacy Brustin, *I Toured an Immigration Detention Center. The Prison-Like Atmosphere Was Mind-Numbing*, USA TODAY (May 16, 2019), <https://www.usatoday.com/story/opinion/voices/2019/05/16/ice-immigration-detention-center-like-prison-otero-column/1190633001/>.

⁵⁶ Mark Noferi, *Making Civil Immigration Detention “Civil,” and Examining the Emerging U.S. Civil Detention Paradigm* 27 J. CIV. RTS. & ECON. DEV. 533, 546, 552 (2014) (asserting that the civil detention standard is far different than the criminal detention standard, and that if implemented correctly, the immigration detention model would not resemble criminal incarceration).

complaint with the Department of Homeland Security, ICE's parent agency.⁵⁷ Both processes are arduous and would result in little help to those who have been brutalized.⁵⁸ Because these two mechanisms are not overseen by an impartial party, such as a judge or jury, they are unlikely to yield results and help protect future reproductive abuses from happening. Under the United States' implementation of the Convention Against Torture, the affected women would be able to file a federal claim, and likely obtain damages for the physical and mental suffering caused by DHS, ICE, and Dr. Amin.⁵⁹

Approximately forty migrant women who ICE personnel subjected to nonconsensual procedures as well as Dawn Wooten filed a complaint in September of 2020 against Dr. Amin, ICE, and DHS.⁶⁰ This complaint focused solely on ICE and DHS violating the PBNDS and did not bring in either domestic or international law.⁶¹ However, a future suit could easily bring in the Convention Against Torture as a legal basis for a suit.⁶² Many of the migrant women who alleged the abuse filed complaints and were subsequently deported.⁶³ In December of 2020, a federal

⁵⁷ See PBNDS, *supra* note 34, § 6.2, at 416; *File a Civil Rights Complaint*, U.S. Dep't Homeland Sec., <https://www.dhs.gov/file-a-civil-rights-complaint> (last visited Apr. 17, 2022).

⁵⁸ See PBNDS, *supra* note 34, § 6.2, at 416 (requiring all formal grievances be filed at the facility where the incident happened, and containing no confidentiality protections against those that do file); *File a Civil Rights Complaint*, *supra* note 57 (requiring the complaint form be filled out, and then email or faxed to DHS, with an alternative to email is using the monitored phone in the facilities, or printing out the form and filing it out and mailing it in when mail is regulated).

⁵⁹ 28 U.S.C. § 1346(b)(1); 28 U.S.C. § 2680(h).

⁶⁰ See Letter from Project South et al., to Joseph V. Cuffari, Inspector Gen., U.S. Dep't of Homeland Sec., et al. (Sept. 14, 2020), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>.

⁶¹ See *id.*

⁶² 28 U.S.C. § 1346(b)(1); 28 U.S.C. § 2680(h).

⁶³ Associated Press, *U.S. Deports Migrants Who Accuse Detention Center Gynecologist of Abuse*, *GUARDIAN* (Nov. 11, 2020, 4:09 PM), <https://www.theguardian.com/us-news/2020/nov/11/us-deportations-women-allege-detention-center-gynecologist-abuse>.

class action lawsuit was filed with the Middle District of Georgia.⁶⁴ Although several motions have been filed in the lawsuit, there has been no hearing on the substantive content within the lawsuit.⁶⁵

The Biden Administration has ordered ICE to stop detaining migrants at the ICDC while the federal investigation is pending.⁶⁶ The Administration has also denounced poor treatment of migrants and has claimed it is working to uphold their fundamental human rights.⁶⁷ However, the number of migrants in detention has continued to grow under President Biden.⁶⁸ Additionally, despite President Biden's executive order banning new private prison contracts, the amount of money private prisons make from holding detained migrants continued to grow.⁶⁹ Despite President Biden's promises and the promises of his Administration, there has been no movement to eliminate the practice of private prisons holding detained migrants, and no federal action has been taken to enjoin ICE or ICE personnel from committing similar acts or reform ICE policies. The Biden Administration must ensure that ICE personnel do not commit similar acts by explicitly prohibiting unnecessary and involuntary medical acts for detainees and by protecting the reproductive autonomy of migrant women.

⁶⁴ Daniella Silva, *Migrant Women File Class-Action Lawsuit for Alleged Medical Abuse at ICE Detention Center*, *NBC NEWS* (Dec. 22, 2020 9:19 AM), <https://www.nbcnews.com/news/us-news/migrant-women-file-class-action-lawsuit-alleged-medical-abuse-ice-n1252066>.

⁶⁵ *Id.*

⁶⁶ Maria Sacchetti, *ICE to Stop Detaining Immigrants at Two County Jails Under Federal Investigation*, *WASH. POST.* (May 20, 2021, 10:00 AM), https://www.washingtonpost.com/immigration/ice-detentions-county-jails-halted/2021/05/20/9c0bd1e-b8de-11eb-a6b1-81296da0339b_story.html.

⁶⁷ See *id.*

⁶⁸ Sacchetti, *supra* note 39 (reporting on the increased numbers of migrants in and out of detention facilities under President Biden).

⁶⁹ Casey Tolan, *Biden Vowed to Close Federal Private Prisons, But Prison Companies Are Finding Loopholes to Keep Them Open*, *CNN* (Nov. 12, 2021 7:03 AM), <https://www.cnn.com/2021/11/12/politics/biden-private-prisons-immigration-detention-centers-invs/index.html> (describing how the executive order contained no ban on private prison contracts for immigration facilities).

With regard to reparations, the United States should federally take action to ensure that these atrocities never occur again. Given the severity of the human rights violations, the United States must conduct a thorough and independent investigation into forced sterilizations at ICE detention facilities to ensure its compliance with international law. At minimum, the United States should adopt the existing federal standard of consent at detention centers.⁷⁰ Further, the United States should commit to ending both forced and coerced sterilizations, regardless of the nationality, immigration status, race, or sexuality of its potential victims.

CONCLUSION

The most recent accounts of forced sterilization at ICDC showcase not only the larger problems within the immigration system but are emblematic of the United States' history of crimes against migrant women. By committing forced sterilizations against migrant women, the United States is violating its obligations under the Convention Against Torture and the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules). As evidenced by the atrocities, the United States needs to recognize their obligation under the Rules and must reaffirm and strengthen its obligations under the Convention against Torture. Both the Rules and the Convention against Torture directly prohibit the appalling acts that occurred at the Irwin County Detention Center, and the United States must be held liable for its violations of these international instruments. Only with accountability will the United States be able to move forward and work on preventing the future abuse of migrant women.

⁷⁰ For further discussion, see Boehm, *supra* note 13, at 558.