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## A Vicious Cycle: United States' Failure to Protect Immigrant Women's Reproductive Rights at the Irwin County Detention Center

Lizet Palomera Torres

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COMMENT

A VICIOUS CYCLE: UNITED STATES'  
FAILURE TO PROTECT IMMIGRANT  
WOMEN'S REPRODUCTIVE RIGHTS  
AT THE IRWIN COUNTY  
DETENTION CENTER

LIZET PALOMERA TORRES\*

[Dr. Amin] jammed the wand into [Y] roughly, causing her excruciating pain. He proceeded to put on a glove and put several fingers inside of her [ ]. When this happened, Y squirmed and said no repeatedly because it hurt—it felt as if Dr. Amin's fingers were going in too deeply, and they were causing a burning pain. In this moment, Y was reminded of her rape and how her bodily autonomy had been ignored in the same way then.<sup>1</sup>

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<sup>1</sup> PRIYANKA BHATT ET AL., PROJECT SOUTH, VIOLENCE & VIOLATION: MEDICAL ABUSE OF IMMIGRANTS DETAINED AT THE IRWIN COUNTY DETENTION CENTER 6 (2021), [https://project-south.org/wp-content/uploads/2021/09/IrwinReport\\_14SEPT21.pdf](https://project-south.org/wp-content/uploads/2021/09/IrwinReport_14SEPT21.pdf).

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## INTRODUCTION

The United States Immigration and Customs Enforcement agency (ICE) detained Jane Doe #15, an immigrant woman, at the Irwin County Detention Center (ICDC) in Georgia.<sup>2</sup> During Jane's time at ICDC, Doctor Mahendra Amin hastily examined her because she was experiencing severe pain in her pelvic area.<sup>3</sup> No translator was present during her ap-

<sup>2</sup> Jane Doe #15 asked to remain anonymous due to fear the guards at ICDC will retaliate against her and due to embarrassment from the horrific abuse she endured. Consolidated Amended Petition for Writ of Habeas Corpus & Class Action Complaint for Declaratory & Injunctive Relief & for Damages at 56, 98, Oldaker v. Giles, 7:20-CV-00224 (M.D. Ga. Dec. 21, 2020) [hereinafter Class Action Complaint].

<sup>3</sup> *Id.* at 57.

pointment, even though she was a native Spanish speaker who did not speak English.<sup>4</sup> Jane did not understand what Dr. Amin told her; the conversation was one-sided and non-reciprocal.<sup>5</sup> When a nurse finally arrived to translate for Jane, Dr. Amin had already left the room.<sup>6</sup> The nurse told her she had a cyst, the size of an egg, on her right ovary and fibroids in her uterus.<sup>7</sup> Yet Dr. Amin had also told several other women in Jane's unit that they had cysts the size of an egg.<sup>8</sup>

A month after the examination, the nurse gave Jane an unidentified injection.<sup>9</sup> Dr. Amin and the nurse did not provide Jane with any information about the injection despite her requests.<sup>10</sup> Ultimately, the unidentified injection did not help her: instead, the injection caused her to bleed continuously for ten days.<sup>11</sup> A few days later, Dr. Amin told Jane he would need to perform surgery on her but did not provide additional information or clarification.<sup>12</sup> Jane remained hesitant and frightened.<sup>13</sup> Jane witnessed several other women at ICDC in debilitating conditions after Dr. Amin performed surgeries on them.<sup>14</sup> Jane also observed that many of Dr. Amin's former surgery patients were deported soon after, and she feared the same would become of her.<sup>15</sup> Not long after, a guard escorted Jane to the hospital.<sup>16</sup> Unbeknownst to Jane, she was scheduled for surgery that day.<sup>17</sup> Jane was not provided with a translator and did not understand anything the medical staff told her.<sup>18</sup> Jane did not know what to expect from the surgery or what the medical personnel would do.<sup>19</sup>

After the surgery, the staff at ICDC neglected Jane's care.<sup>20</sup> She could not get out of bed on her own; her wounds would not stop bleeding and eventually became infected.<sup>21</sup> Other women in her unit had to help her get out of bed, help her walk to the bathroom, and bring her food.<sup>22</sup>

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<sup>4</sup> *Id.* at 57-58.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 58.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 59.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 60.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Two months later, Jane tried to ask Dr. Amin about the surgery he performed on her.<sup>23</sup> He refused to answer Jane's questions.<sup>24</sup> With no remorse, nor any regard for Jane's distress, Dr. Amin told Jane she could no longer have children.<sup>25</sup> He declined to provide any additional context.<sup>26</sup> Jane was in disbelief and completely devastated.<sup>27</sup> She requested that someone else examine her, but Dr. Amin shrugged and ignored her request.<sup>28</sup>

Unfortunately, the abuse that Jane endured at the hands of ICDC is not an isolated situation. Immigrant women detained at the ICDC have been suffering egregious medical abuse for decades.<sup>29</sup> Advocates, such as the American Civil Liberties Union, the National Immigration Project, and Project South, have consistently raised concerns about the ICDC's treatment of immigrants at the facility.<sup>30</sup> Further, according to Homeland Security inspection reports, the ICDC continues to violate national detention standards.<sup>31</sup> Recently, in September 2020, a whistleblower complaint by a licensed practical nurse at the ICDC exposed the non-consensual and unnecessary gynecological procedures performed on immigrant women at the facility.<sup>32</sup>

One victim described the ICDC as "a prison where every day felt like torture."<sup>33</sup> Another victim recounted that "[i]t was only after being deported and consulting with other doctors that [she] discovered that her fallopian tubes had been removed and that she could [not] have any more children."<sup>34</sup> A third victim described the ICDC as "like a mental hospi-

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See ALEXANDRA SACHI COLE, ACLU, PRISONERS OF PROFIT (2012), [https://www.prisonlegalnews.org/media/publications/georgia\\_aclu\\_prisoners\\_of\\_profit\\_immigrants\\_and\\_detention\\_in\\_georgia\\_2012.pdf](https://www.prisonlegalnews.org/media/publications/georgia_aclu_prisoners_of_profit_immigrants_and_detention_in_georgia_2012.pdf); CTR. FOR IMMIGRANTS' RTS. CLINIC, PA. STATE L., IMPRISONED JUSTICE: INSIDE TWO GEORGIA IMMIGRANT DETENTION CENTERS (2017), [https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\\_Justice\\_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf); Sirine Shebaya, *Breaking: Legal Filing Reveals Growing Number of Women Experienced Medical Abuse in ICE Custody*, NAT'L IMMIGR. PROJECT (Dec. 22, 2020), [https://www.nationalimmigrationproject.org/pr/2020\\_21Dec\\_oldaker-v-giles.html](https://www.nationalimmigrationproject.org/pr/2020_21Dec_oldaker-v-giles.html).

<sup>30</sup> BHATT ET AL., *supra* note 1, at 1.

<sup>31</sup> Molly O'Toole, *ICE to Close Georgia Detention Center Where Immigrant Women Alleged Medical Abuse*, L.A. TIMES (May 20, 2021, 2:02 PM), <https://www.latimes.com/politics/story/2021-05-20/ice-irwin-detention-center-georgia-immigrant-women-alleged-abuse>.

<sup>32</sup> BHATT ET AL., *supra* note 1, at 1.

<sup>33</sup> *Id.* at 11.

<sup>34</sup> *Id.* at 15.

tal.”<sup>35</sup> She heard “people screaming, asking for help.”<sup>36</sup> But there was no attention; the ICDC officers abandoned them.<sup>37</sup>

This Comment focuses on advancing the reproductive rights of immigrant women held in detention centers in Georgia. In particular, this Comment recommends that the Georgia General Assembly enact legislation prohibiting the sterilization of any individual imprisoned in its state. Part I discusses the historical background of forced sterilization. Part II reviews the pending case of the immigrant women, including Jane Doe #15, who filed suit against the ICDC challenging the medically unnecessary and non-consensual gynecological procedures. Part III describes the relevant law and standards in detention centers. Part IV examines how the Department of Homeland Security (DHS), ICE, and the ICDC<sup>38</sup> violated these women’s fundamental rights guaranteed under domestic and international law. Last, Part V provides recommendations to the state of Georgia.

## I. BACKGROUND

The growth of immigration detention has been exponential. Currently, the detention system captures and holds as many as 250,000 immigrants each year.<sup>39</sup> To help operate facilities and house detainees, ICE contracts with local governments and private prison corporations.<sup>40</sup> Particularly, for the past three decades, ICE has increasingly relied on private, for-profit prison corporations.<sup>41</sup> These private, for-profit corporations have a peculiarly grisly track record of medical neglect, abuse, and mismanagement.<sup>42</sup> The most recent example is the ICDC in Georgia, where Jane Doe #15 was held.<sup>43</sup>

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<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Class Action Complaint, *supra* note 2, at 5-6 (ICE is a federal law enforcement agency within the DHS. ICE is responsible for enforcing immigration laws, including the detention and removal of immigrants. ICDC, a detention facility in Ocilla, Georgia, contracted with the federal government to detain individuals according to federal immigration laws. As such, the DHS, ICE, and ICDC, among others, are legal custodians of the immigrant women at the ICDC).

<sup>39</sup> *Immigration Detention 101*, DET. WATCH NETWORK, <https://www.detentionwatchnetwork.org/issues/detention-101> (last visited Mar. 24, 2023).

<sup>40</sup> *Id.*

<sup>41</sup> *Privatized Immigration Detention*, ACLU, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/privatized-immigration-detention> (last visited Mar. 24, 2023).

<sup>42</sup> BHATT ET AL., *supra* note 1, at 12.

<sup>43</sup> Class Action Complaint, *supra* note 2, at 56.

The forced sterilization practices at the ICDC sparked public outrage, with many calling them human rights violations.<sup>44</sup> The critics viewed what happened as distinctly “un-American” and at odds with America’s values.<sup>45</sup> However, the impression that the United States engaged in a uniquely cruel and unprecedented act solely in the immigration context is misleading.<sup>46</sup> As shocking as what happened in the ICDC may be, it is not a novel phenomenon.<sup>47</sup> The United States has a long and egregious history of eugenics and forced sterilization, primarily directed toward poor minority women.<sup>48</sup> Accordingly, while the experience of the ICDC detainees is undoubtedly horrific, it is not unprecedented.<sup>49</sup>

#### A. HISTORY OF EUGENICS AND FORCED STERILIZATION

Throughout the nineteenth century, the “science” of eugenics was used to justify sterilization programs.<sup>50</sup> Sterilization is a “procedure by which a living organism is made incapable of reproduction.”<sup>51</sup> Eugenics supporters believed that the human species can be improved by mating people with desirable hereditary traits.<sup>52</sup> They believed that mental illness, criminal tendencies, and even poverty were inherited characteristics that could be bred out of the gene pool.<sup>53</sup> As a result, “eugenics encouraged people of so-called healthy, superior stock to reproduce and discouraged reproduction of the mentally challenged or anyone who fell outside the social norm.”<sup>54</sup>

During the twentieth century, the United States also began to widely embrace the eugenics movement.<sup>55</sup> The belief that mental illness, criminal tendencies, and poverty were inherited and thus were a threat to the welfare of the nation led several states to enact laws that promoted segre-

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<sup>44</sup> Sanjana Manjeshwar, *America’s Forgotten History of Forced Sterilization*, BERKELEY POL. REV. (Nov. 4, 2020), <https://bpr.berkeley.edu/2020/11/04/americas-forgotten-history-of-forced-sterilization/>.

<sup>45</sup> *Id.*

<sup>46</sup> *See generally id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Eugenics*, HISTORY (Oct. 28, 2019), <https://www.history.com/topics/germany/eugenics>.

<sup>51</sup> *Sterilization*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sterilization> (last visited Mar. 24, 2023).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Alexandra Stern, *Forced Sterilization Policies in the U.S. Targeted Minorities and Those with Disabilities – and Lasted into the 21st Century*, INST. FOR HEALTHCARE POL’Y & INNOVATION, (Sept. 23, 2020), <https://ihpi.umich.edu/news/forced-sterilization-policies-us-targeted-minorities-and-those-disabilities-and-lived-21st>.

gation and involuntary sterilization.<sup>56</sup> An Alabama brochure that promoted the institutionalization of feeble-minded persons described them in the following manner: “They do not work. They are immoral. They commit crimes. They multiply like rabbits, and their children are feeble-minded . . . .”<sup>57</sup> Sterilization programs resulted in the forceful sterilization of more than 70,000 people in the United States throughout the twentieth century.<sup>58</sup> These sterilization programs ultimately had a disproportionate impact on minority groups.<sup>59</sup>

Eugenic sterilization was further kept alive in part due to the United States Supreme Court decision, *Buck v. Bell*.<sup>60</sup> In the 1927 landmark case, the Supreme Court affirmed Virginia’s decision to involuntarily sterilize Carrie Buck, a Virginia woman, validating and increasing sterilizations throughout the country.<sup>61</sup> The Virginia law permitted the sterilization of anyone who was considered feeble-minded, an imbecile, or epileptic.<sup>62</sup> Justice Oliver Wendell Holmes wrote that “[t]hree generations of imbeciles [were] enough.”<sup>63</sup>

Although the Supreme Court has not overruled *Bell* or explicitly held that forced or compulsory sterilizations are unconstitutional, its 1942 *Skinner v. Oklahoma* decision is often reasoned to limit *Bell*’s rationale.<sup>64</sup> In *Skinner*, the Supreme Court ruled on the constitutionality of Oklahoma’s Habitual Criminal Sterilization Act of 1935.<sup>65</sup> The Oklahoma statute allowed a defendant to be forcibly sterilized if the court or jury determined he was a habitual criminal.<sup>66</sup> The statute applied to persons convicted of larceny.<sup>67</sup> However, it expressly exempted persons convicted of embezzlement, although, under many circumstances, the nature of the two crimes were intrinsically the same and, under the state’s law, they were punishable in the same manner.<sup>68</sup> The Supreme Court unanimously held the Oklahoma sterilization law violated the

<sup>56</sup> Rowena A. Daniels, *Rectifying a Wrong: American Eugenics—Beneficial to the State, but Detrimental to the People*, 4 TENN. J. OF RACE, GENDER, & SOC. JUST. 157, 164 (2015).

<sup>57</sup> EDWARD J. LARSON, SEX, RACE, AND SCIENCE: EUGENICS IN THE DEEP SOUTH 81 (1995).

<sup>58</sup> Leita Powers, *Could Forced Sterilization Still be Legal in the U.S.?*, SYRACUSE L. REV. (Oct. 15, 2020), <https://lawreview.syr.edu/could-forced-sterilization-still-be-legal-in-the-us/>.

<sup>59</sup> Manjeshwar, *supra* note 44.

<sup>60</sup> See *Buck v. Bell*, 274 U.S. 200 (1927).

<sup>61</sup> *Id.* at 205, 208; Margarita Tartakovsky, *Eugenics & the Story of Carrie Buck*, PSYCHCENTRAL (Jan. 24, 2011), <https://psychcentral.com/blog/eugenics-the-story-of-carrie-buck#1>.

<sup>62</sup> Tartakovsky, *supra* note 61.

<sup>63</sup> *Buck v. Bell*, 274 U.S. 200, 207 (1927).

<sup>64</sup> Powers, *supra* note 58.

<sup>65</sup> *Skinner v. Oklahoma*, 316 U.S. 535, 536 (1942).

<sup>66</sup> *Id.* at 536-37 (The statute defined a “habitual criminal” as a person convicted two or more times for crimes “amounting to felonies involving moral turpitude.”).

<sup>67</sup> *Id.* at 538.

<sup>68</sup> *Id.* at 537-39.



Equal Protection Clause.<sup>69</sup> Although the penalties for larceny and embezzlement were the same, the penalties of the law were different when it came to the requirement of sterilization, resulting in invidious discrimination against different groups of persons.<sup>70</sup>

The *Skinner* decision failed to address critical constitutional questions surrounding forced sterilization, including “whether forced sterilization was punitive in nature, whether it constituted cruel and unusual punishment, or whether it violated the Due Process Clause of the Fourteenth Amendment.”<sup>71</sup> The Court’s failure to address these questions left the door open for continued medical abuse.<sup>72</sup> Thus, critics of *Skinner* argue that the Court should have invalidated the Oklahoma statute on the basis that it denied defendants due process before permanently invading their liberty, rather than arguing that this right was based on the Equal Protection Clause.<sup>73</sup>

#### B. FORCED STERILIZATION IN CENTRAL CALIFORNIA WOMEN’S FACILITY

The documentary film *Belly of the Beast* raised awareness of the forced sterilizations of women in the Central California Women’s Facility (CCWF).<sup>74</sup> The documentary centered on the story of Kelli Dillon, who was forcibly sterilized while incarcerated at the facility.<sup>75</sup> The CCWF physician told Dillon that she needed surgery to treat an ovarian cyst but did not tell her the specifics of the surgery.<sup>76</sup> Instead, the physician performed a hysterectomy on Dillon.<sup>77</sup> Dillon was unaware of the procedure until her lawyer Cynthia Chandler informed her that she would never have children again.<sup>78</sup>

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<sup>69</sup> *Id.* at 541-43.

<sup>70</sup> *Id.* at 541-42.

<sup>71</sup> See generally *id.*; Powers, *supra* note 58.

<sup>72</sup> See generally Powers, *supra* note 58 (“[I]t is unclear whether forced sterilization is a practice of the past.” For instance, between 2006 and 2010, “nearly 150 women were sterilized in California’s prisons without the state’s approval.”)

<sup>73</sup> *Skinner*, 316 U.S. at 543-44 (Stone, J., concurring) (“I think the real question we have to consider is not one of equal protection, but whether . . . such an invasion of personal liberty, . . . satisfies the demands of due process.”); see generally Powers, *supra* note 58.

<sup>74</sup> Shilpa Jindia, *Belly of the Beast: California’s Dark History of Forced Sterilizations*, THE GUARDIAN (June 30, 2020, 6:00 AM), <https://www.theguardian.com/us-news/2020/jun/30/california-prisons-forced-sterilizations-belly-beast>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

The prison's medical staff specifically targeted pregnant inmates and repeat offenders, such as Dillon.<sup>79</sup> Dillon soon discovered that physicians at the CCWF also performed hysterectomies on many of her fellow inmates.<sup>80</sup> Sometimes they were performed immediately following childbirth, while others were performed after telling the inmates that the procedures were necessary to check for cancers or correct gynecological issues.<sup>81</sup> CCWF and its medical staff frequently left the patients in the dark about what procedure they performed on the patients.<sup>82</sup> According to *Belly of the Beast*, state audit and prison records revealed at least 1,400 forced sterilizations between 1997 and 2013.<sup>83</sup> Additionally, between 1997 and 2010, California paid doctors to perform sterilization procedures on inmates.<sup>84</sup> One of the prison doctors told the Center for Investigative Reporting (CIR) that he saw sterilization as a way to keep prisoners from procreating and having “unwanted children” that would cost the state money.<sup>85</sup> He stated that “it was a cost-effective way of preventing people from needing welfare.”<sup>86</sup>

Driven in part by Dillon's testimony, California banned coerced sterilizations in prisons in 2014.<sup>87</sup> California Penal Code section 3440 prohibits the sterilization of any inmate in state or county jails, except when the procedure “is required for the immediate preservation of the individual's life in an emergency medical situation” or when the “sterilizing procedure is medically necessary.”<sup>88</sup> Further, if a sterilization procedure is carried out under one of these exceptions, the department is required by law to follow additional guidelines.<sup>89</sup> First, the law requires psychological consultation and medical follow-up.<sup>90</sup> Second, the law requires that each department publish “data related to the number of sterilizations performed, disaggregated by race, age, medical justification, and

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<sup>79</sup> Brenna Evans, *The Long Scalpel of the Law: How United States Prisons Continue to Practice Eugenics Through Forced Sterilization*, MINN. J.L. & INEQ. (2021), <https://lawandinequality.org/2021/06/07/the-long-scalpel-of-the-law-how-united-states-prisons-continue-to-practice-eugenics-through-forced-sterilization>.

<sup>80</sup> Erin McCormick, *Survivors of California's Forced Sterilizations: "It's Like My Life Wasn't Worth Anything,"* THE GUARDIAN (July 19, 2021, 6:00 AM), <https://www.theguardian.com/us-news/2021/jul/19/california-forced-sterilization-prison-survivors-reparations>.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Jindia, *supra* note 74.

<sup>84</sup> Evans, *supra* note 79.

<sup>85</sup> McCormick, *supra* note 80.

<sup>86</sup> *Id.*

<sup>87</sup> See CAL. PENAL CODE § 3440 (2016); Jindia, *supra* note 74.

<sup>88</sup> § 3440(b)(1)-(2).

<sup>89</sup> § 3440(c).

<sup>90</sup> *Id.*

[the] method of sterilization.”<sup>91</sup> Third, the law requires the department to notify “all individuals under their custody and to all employees who are involved in providing health care services of their rights and responsibilities” concerning the sterilization of inmates.<sup>92</sup> However, because the California law only applies to state prisons and jails, it offers no protection to detainees in any immigration context.<sup>93</sup>

## II. MEDICAL ABUSE OF IMMIGRANTS AT THE IRWIN COUNTY DETENTION CENTER

The topic of forced sterilization has gained media attention again after the release of a whistleblower report in September 2020 by an ICDC licensed practical nurse at the center.<sup>94</sup> The whistleblower, Dawn Wooten, reported “jarring medical neglect.”<sup>95</sup> Several detainees reported that they were pressured or forced to undergo medically unnecessary procedures.<sup>96</sup> Wooten further expressed that the ICDC personnel would advise many women who underwent hysterectomies that the procedure was necessary.<sup>97</sup>

Dr. Mahendra Amin, the alleged practitioner primarily responsible for the medical abuse, was employed at the ICDC under a government-funded contract.<sup>98</sup> Dr. Amin performed non-consensual and medically unnecessary gynecological procedures, such as hysterectomies, on the detained immigrant women.<sup>99</sup> When these women tried to report the abuse, the ICDC staff retaliated against them in an effort to silence them.<sup>100</sup> The staff put the women who spoke out in medical units or solitary confinement, restricted their cell space, separated protestors by transferring them to other units, and even physically assaulted them.<sup>101</sup> Further, in response to women who went on a hunger strike to protest the conditions, the ICDC staff rationed “access to water, took money out of [ ] commissary accounts, and limited or cut off [ ] access to phones, tablets, video calls, and email.”<sup>102</sup> Additionally, the staff delayed the deliv-

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<sup>91</sup> § 3440(d).

<sup>92</sup> § 3440(e).

<sup>93</sup> See § 3440.

<sup>94</sup> Evans, *supra* note 79.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Class Action Complaint, *supra* note 2, at 1, 6, 7.

<sup>99</sup> *Id.* at 1; Caitlin Dickerson et al., *Immigrants Say They Were Pressured into Unneeded Surgeries*, N.Y. TIMES (Sept. 29, 2020), <https://www.nytimes.com/2020/09/29/us/ice-hysterectomies-surgeries-georgia.html>.

<sup>100</sup> Class Action Complaint, *supra* note 2, at 1-2.

<sup>101</sup> *Id.* at 1.

<sup>102</sup> *Id.* at 1-2.

ery of the women's prescribed medication, denied the women access to the law library, and denied them access to their medical records.<sup>103</sup>

As the case progressed, an increasing number of detainees began speaking out about the procedures they endured at the ICE facility, specifically at the hands of Dr. Amin.<sup>104</sup> As of November 19, 2020, 57 detainees came forward to say that they were pressured or underwent medically unnecessary gynecological surgeries.<sup>105</sup> However, due to the lack of proper medical records and the deportation of witnesses and survivors, the number is thought to be much higher.<sup>106</sup>

Several federal agencies launched investigations into the allegations after the whistleblower report.<sup>107</sup> These investigations ultimately confirmed that Dr. Amin was subjecting women to medically unnecessary procedures.<sup>108</sup> In addition, a team of independent medical professionals reviewed the medical records of the women detained at ICDC.<sup>109</sup> The team of independent medical professionals also concluded that the procedures Dr. Amin performed on the immigrant women were not medically necessary.<sup>110</sup> On the contrary, the procedures put the women in danger.<sup>111</sup>

On December 21, 2020, the National Immigration Project of the National Lawyers Guild, Project South, six law school clinics, and Dreyer Sterling LLC filed three actions in the United States District Court for the Middle District of Georgia: a class-action lawsuit; a petition for a writ of habeas corpus; and a motion for a temporary restraining order against ICE, the prison corporation LaSalle that operates ICDC, Dr. Amin, and several other officials.<sup>112</sup> Nine of Dr. Amin's victims being held at the ICDC are among the named plaintiffs.<sup>113</sup> In addition, more

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<sup>103</sup> *Id.* at 1.

<sup>104</sup> Evans, *supra* note 79.

<sup>105</sup> John Washington & José Olivares, *Number of Women Alleging Misconduct by ICE Gynecologist Nearly Triples*, THE INTERCEPT (Oct. 27, 2020, 1:10 PM), <https://theintercept.com/2020/10/27/ice-irwin-women-hysterectomies-senate/>.

<sup>106</sup> *Id.*

<sup>107</sup> Memorandum of L. in Support of Emergency Motion for Temp. Restraining Ord. & Petition for Writs of Habeas Corpus Ad Testificandum at 3-4, *Oldaker v. Giles*, No. 7:20-CV-00224 (M.D. Ga. Dec. 21, 2020) [hereinafter *Temporary Restraining Order*]; Class Action Complaint, *supra* note 2, at 1 (The federal agencies include the Department of Justice, the Department of Homeland Security Office of the Inspector General, and the Federal Bureau of Investigation).

<sup>108</sup> *Temporary Restraining Order*, *supra* note 107, at 3-4.

<sup>109</sup> *Id.* at 3.

<sup>110</sup> *Id.* at 3-4.

<sup>111</sup> *Id.*

<sup>112</sup> BHATT ET AL., *supra* note 1, at 2.

<sup>113</sup> Class Action Complaint, *supra* note 2, at 2-4.

than forty women testified in court confirming Dr. Amin's pattern of medical abuse.<sup>114</sup> This matter is pending as of May 2023.

### III. LEGAL STANDARDS

Although not expressly written in the United States Constitution, the Supreme Court has held that the federal government has the power to regulate immigration.<sup>115</sup> In the immigration context, under the Supremacy Clause, federal law is the supreme law of the land.<sup>116</sup> Thus, while states may share specific duties with the federal government, if a state or locality enacts a law that burdens or conflicts with federal law or policy, the federal law will preside and preempt and invalidate the state law.<sup>117</sup>

#### A. THE UNITED STATES CONSTITUTION

While immigrants in the nation do not have full constitutional rights, they retain some rights.<sup>118</sup> In several parts of the Constitution, the word "people" or "persons" is used instead of the word "citizens" or "immigrants."<sup>119</sup> As a result, several of these laws apply not only to citizens but to anyone physically on United States soil.<sup>120</sup> Particularly, detained immigrants are protected by the First Amendment's Freedom of Speech and Right to Petition clauses, the Fifth Amendment's Due Process and Equal Protection Clauses, and the Fourteenth Amendment's Equal Protection Clause, among others.<sup>121</sup>

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<sup>114</sup> BHATT ET AL., *supra* note 1, at 2.

<sup>115</sup> *See, e.g.*, *DeCanas v. Bica*, 424 U.S. 354-55 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power.").

<sup>116</sup> U.S. CONST. art. 6, cl. 2.

<sup>117</sup> Lindsay Ficklin, *What Can States do About Immigration?*, ARIZ. STATE L. J. (Apr. 19, 2021), <https://arizonastatelawjournal.org/2021/04/19/what-can-states-do-about-immigration/>; *see, e.g.*, *Pacific Gas & Electric Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983) (allowing both federal and state involvement in nuclear waste site duties).

<sup>118</sup> *See, e.g.*, *Wing v. United States*, 163 U.S. 228, 238 (1896) ("These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or nationality.").

<sup>119</sup> Gretchen Frazee, *What Constitutional Rights Do Undocumented Immigrants Have?*, PBS (Jun. 25, 2018, 5:08 PM), <https://www.pbs.org/newshour/politics/what-constitutional-rights-do-undocumented-immigrants-have>.

<sup>120</sup> *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (The Fifth Amendment's Due Process Clause extends to all individuals within the United States regardless of "whether their presence in the United States is lawful, unlawful, temporary, or permanent.").

<sup>121</sup> Frazee, *supra* note 119; *Prisoners' Rights*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/prisoners%27\\_rights#:~:text=although%20prisoners%20do%20not%20have,a%20minimum%20standard%20of%20living](https://www.law.cornell.edu/wex/prisoners%27_rights#:~:text=although%20prisoners%20do%20not%20have,a%20minimum%20standard%20of%20living) (last updated June 2017).

Until the early twentieth century, the first ten amendments of the Constitution, known as the Bill of Rights, applied only to the federal government.<sup>122</sup> Eventually, the incorporation doctrine extended the Bill of Rights to the states through the Due Process Clause of the Fourteenth Amendment.<sup>123</sup> However, instead of incorporating the entire Bill of Rights to the states, the Supreme Court long favored a process called selective incorporation.<sup>124</sup> The Supreme Court used selective incorporation to incorporate only portions of certain amendments rather than the entire amendments all at once.<sup>125</sup> Currently, the First, Second, Fourth, and Eighth Amendments are fully incorporated and are thus fully applicable to the states, whereas the Fifth and Sixth amendments are partially incorporated.<sup>126</sup> In contrast, the Third, Seventh, Ninth, and Tenth Amendments have not been incorporated at all and thus are unlikely ever to be found applicable to the states.<sup>127</sup>

### 1. *The First Amendment: Right to Free Speech and Right to Petition*

Enshrined in the First Amendment of the United States Constitution is the right to free speech and the right to petition the government for a redress of grievances.<sup>128</sup> The First Amendment states, “Congress shall make no law . . . abridging freedom of speech.”<sup>129</sup> Generally speaking, this means that the “government may not jail, fine, or impose civil liability on people or organizations based on what they say or write.”<sup>130</sup> Although the First Amendment says “Congress,” the Supreme Court has held that this amendment applies to all government actors.<sup>131</sup> Additionally, the Supreme Court has interpreted “speech” broadly to incorporate verbal, written, and symbolic forms of expression.<sup>132</sup>

<sup>122</sup> See *Incorporation Doctrine*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/incorporation\\_doctrine](https://www.law.cornell.edu/wex/incorporation_doctrine) (last updated Oct. 2022).

<sup>123</sup> *Id.* (“[T]he incorporation doctrine is a constitutional doctrine through which the first ten amendments of the United States Constitution (known as the Bill of Rights) are made applicable to the states through the Due Process clause of the Fourteenth Amendment.”).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> U.S. CONST. amend. I.

<sup>129</sup> *Id.*

<sup>130</sup> Geoffrey R. Stone & Eugene Volokh, *Freedom of Speech and the Press*, NAT’L CONST. CTR., <https://constitutioncenter.org/the-constitution/amendments/amendment-i/interpretations/266> (last visited Mar. 24, 2023).

<sup>131</sup> See, e.g., *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017).

<sup>132</sup> Stone & Volokh, *supra* note 130.

The First Amendment protects people, including detained immigrants, from retaliation for exercising their right to free speech.<sup>133</sup> Government actors may not threaten detained immigrants with deportation for exercising this fundamental right.<sup>134</sup> The Supreme Court has recognized that “deportation is a particularly severe ‘penalty.’”<sup>135</sup> As a result, courts have consistently held that “removing someone from the United States to silence them and prohibit them from speaking out constitutes retaliation” in violation of the First Amendment.<sup>136</sup>

The First Amendment also prohibits Congress from creating a law that will infringe on the fundamental right to petition the government for redress of grievances.<sup>137</sup> This freedom allows those on United States soil, such as detained immigrants, to seek redress for complaints without fear of reprisal.<sup>138</sup> As with freedom of speech, the Supreme Court held that the right to petition prohibits all government actors—not just Congress—from infringing on this right.<sup>139</sup>

## 2. *The Fifth Amendment: Due Process of Law*

The Fifth Amendment’s Due Process Clause states that no one shall be “deprived of life, liberty or property without due process of law.”<sup>140</sup> Similarly, the Fourteenth Amendment’s Due Process Clause uses the same words as the Fifth Amendment’s Due Process Clause: no state shall “deprive any person of life, liberty, or property, without due process of law.”<sup>141</sup> Thus, the federal and state obligations to the people are exactly the same.

Due process under both the Fifth and the Fourteenth Amendments consists of procedural and substantive due process.<sup>142</sup> Procedural due process is based on principles of fundamental fairness and addresses legal procedures that must be followed in government proceedings.<sup>143</sup> In

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<sup>133</sup> BHATT ET AL., *supra* note 1, at 19.

<sup>134</sup> *Id.*

<sup>135</sup> *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010).

<sup>136</sup> BHATT ET AL., *supra* note 1, at 19.

<sup>137</sup> *Petition for Redress of Grievances*, THE SANDERS FIRM, P.C., <https://www.thesandersfirm.com/petition-for-redress-of-grievances> (last visited Mar. 24, 2023).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* (The freedom to petition “has been expanded to include state governments, courts, and executive branches as well as all branches of the federal government.”).

<sup>140</sup> U.S. CONST. amend. V.

<sup>141</sup> U.S. CONST. amend. XIV, § 1.

<sup>142</sup> *Amdt5.5.1 Overview of Due Process*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/amdt5-5-1/ALDE\\_00013721/](https://constitution.congress.gov/browse/essay/amdt5-5-1/ALDE_00013721/) (last visited Mar. 24, 2023).

<sup>143</sup> *Id.*

other words, it affords individuals the right to a fair process.<sup>144</sup> As a separate matter, substantive due process, although also based on principles of fundamental fairness, addresses the right of the people to enjoy certain unenumerated rights without governmental intrusion.<sup>145</sup>

The Supreme Court has long recognized that Congress has plenary power over immigration and gave Congress almost complete authority to decide whether immigrants may remain in the United States.<sup>146</sup> However, Congress's plenary power over immigration is subject to important constitutional limitations.<sup>147</sup> One such limitation is that Congress can only detain and remove undocumented immigrants through constitutionally permissible means.<sup>148</sup> The Court has held that "immigration detention violates due process unless it is reasonably related to its purpose of ensuring that immigrants do not abscond."<sup>149</sup> Additionally, "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being."<sup>150</sup>

In summary, detention is an extreme form of government intrusion.<sup>151</sup> At minimum, detained immigrants are entitled to "food, clothing, shelter, medical care, and reasonable safety."<sup>152</sup> Failing to supply these basic necessities to detained immigrants violates their due process rights.<sup>153</sup>

## B. NATIONAL DETENTION STANDARDS

In 2003, ICE was established under the Department of Homeland Security to manage the United States civil immigration detention sys-

<sup>144</sup> *Due Process*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/due\\_process](https://www.law.cornell.edu/wex/due_process) (last updated Oct. 2022).

<sup>145</sup> *Id.*; *Due Process of Law*, JUSTIA, <https://law.justia.com/constitution/us/amendment-14/04-due-process-of-law.html> (last visited Mar. 24, 2023).

<sup>146</sup> *Implied Power of Congress over Immigration: Overview*, LEGAL INFO. INST., <https://www.law.cornell.edu/constitution-conan/article-1/section-8/clause-18/implicit-power-of-congress-over-immigration-overview> (last visited Mar. 24, 2023).

<sup>147</sup> *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).

<sup>148</sup> Kelsey E. Papst, *Protecting the Voiceless: Ensuring ICE's Compliance with Standards that Protect Immigration Detainees*, 40 MCGEORGE L. REV. 261, 265 (2009), <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1212&context=mlr>.

<sup>149</sup> MICHAEL TAN, IMMIGR. POL'Y CTR., *LOCKED UP WITHOUT END: INDEFINITE DETENTION OF IMMIGRANTS WILL NOT MAKE AMERICA SAFER* 7 (2011), [https://www.americanimmigrationcouncil.org/sites/default/files/research/Tan\\_-\\_Locked\\_Up\\_Without\\_End\\_100611\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/Tan_-_Locked_Up_Without_End_100611_0.pdf) (citing *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001)).

<sup>150</sup> *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199–200 (1989).

<sup>151</sup> *Dismantling Detention*, HUM. RTS. WATCH (Nov. 3, 2021), <https://www.hrw.org/report/2021/11/03/dismantling-detention/international-alternatives-detaining-immigrants>.

<sup>152</sup> *DeShaney*, 489 U.S. at 200.

<sup>153</sup> BHATT ET AL., *supra* note 1, at 19.



tem.<sup>154</sup> ICE developed a set of national standards—the Performance-Based National Detention Standards 2011 (PBNDS)—to address several needs of detainees, such as safety, security, and conditions of confinement.<sup>155</sup> Although not legally enforceable, the PBNDS provide suggested guidelines to ICE detention facilities.<sup>156</sup> These standards apply to Service Processing Centers, Contract Detention Facilities, and state or local government facilities that ICE uses through Intergovernmental Service Agreements to hold detainees for more than seventy-two hours.<sup>157</sup>

Regarding the medical care of immigrant women, PBNDS standard 4.4 states that facilities must provide female detainees with “routine, age appropriate gynecological and obstetrical health care, consistent with recognized community guidelines for women’s health services.”<sup>158</sup> Further, the PBNDS states that appropriately trained medical personnel—upon request—should “provide detainees with [impartial] non-directive [advice] and consultation about family planning and contraception, and where medically appropriate, prescribe and dispense medical contraception.”<sup>159</sup>

If the detained immigrants are limited in their English proficiency, PBNDS standard 4.4 mandates that the facility provide them communication assistance.<sup>160</sup> Further, facilities must translate all written materials provided to detainees in Spanish or, where possible, other languages.<sup>161</sup> They also have to provide oral interpretation or assistance “to any detainee who speaks another language in which [the] written material has not been translated or who is illiterate.”<sup>162</sup>

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<sup>154</sup> *Honoring the History of ICE*, U.S. IMMIGR. AND CUSTOMS ENF’T, <https://www.ice.gov/features/history> (last updated July 12, 2022); *Detention Management*, U.S. IMMIGR. AND CUSTOMS ENF’T, <https://www.ice.gov/detain/detention-management> (last updated July 12, 2022).

<sup>155</sup> U.S. IMMIGR. AND CUSTOMS ENF’T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011, at i (2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

<sup>156</sup> Nina Rabin, *Unseen Prisoners: Women in Immigration Detention Facilities in Arizona*, 23 GEO. IMMIGR. L.J. 695, 706 (2009); *ICE Detention Standards*, U.S. IMMIGR. AND CUSTOMS ENF’T (Nov. 9, 2021), <https://www.ice.gov/factsheets/facilities-pbnds>.

<sup>157</sup> U.S. IMMIGR. AND CUSTOMS ENF’T, *supra* note 155, at 77; DORA SCHIRRO, U.S. DEP’T OF HOMELAND SEC., IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS 10 (2009), <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> (Service Processing Centers are facilities owned by ICE and operated by the private sector. Contract Detention Facilities are owned and operated by the private sector. Intergovernmental Service Agreement facilities are dedicated local county jails).

<sup>158</sup> U.S. IMMIGR. AND CUSTOMS ENF’T, *supra* note 155, at 322.

<sup>159</sup> *Id.* at 324.

<sup>160</sup> *Id.* at 322.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

ICE also conducts annual detention inspections through an independent third-party contractor to ensure that facilities satisfy the PBNDS.<sup>163</sup> According to ICE, their inspection process offers unequivocal assurance that detainees are housed in the least restrictive environment.<sup>164</sup> However, despite ICE's commitment to reform the immigration detention system, noncompliance with the PBNDS remains widespread because the federal government has not codified the PBNDS as either a law or a regulation.<sup>165</sup>

### C. INTERNATIONAL HUMAN RIGHTS

International law requires the humane treatment of all people in custody.<sup>166</sup> The United Nations (UN), a global organization, was established in 1945 with the goals of advancing human rights and fostering greater political and economic cooperation among its member nations.<sup>167</sup> The UN has ratified a number of international human rights treaties since its founding.<sup>168</sup> Currently, almost all nations in the world—including the United States—are UN members.<sup>169</sup> Three core international human rights treaties are the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966;<sup>170</sup> the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), adopted in 1984;<sup>171</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965.<sup>172</sup>

<sup>163</sup> *Facility Inspections*, U.S. IMMIGR. AND CUSTOMS ENF'T, <https://www.ice.gov/detain/facility-inspections> (last visited Mar. 24, 2023).

<sup>164</sup> *Id.*

<sup>165</sup> Rabin, *supra* note 156.

<sup>166</sup> G.A. Res. 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (Dec. 9, 1988).

<sup>167</sup> See Adam Hayes, *United Nations (UN): Definition, Purpose, Structure, and Members*, INVESTOPEDIA (Dec. 20, 2021), <https://www.investopedia.com/terms/u/united-nations-un.asp>.

<sup>168</sup> *International Human Rights Law*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> (last visited Mar. 24, 2023).

<sup>169</sup> *Member States*, U.N. <https://www.un.org/en/about-us/member-states> (last visited Mar. 24, 2023).

<sup>170</sup> G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights art. 10 (Dec. 16, 1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>171</sup> G.A. Res. 39/46, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 10 (Dec. 16, 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

<sup>172</sup> G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, (Dec. 21, 1965), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>.

These treaties are the backbone of international human rights.<sup>173</sup> When a country ratifies a particular treaty, the country is required to respect the obligations and duties described therein.<sup>174</sup> Among these obligations is the duty to respect, protect, and fulfill human rights.<sup>175</sup> Regarding the obligation to respect, members “must refrain from interfering with or curtailing the enjoyment of human rights.”<sup>176</sup> Regarding the obligation to protect, members must “protect individuals and groups against human rights abuses.”<sup>177</sup> And lastly, regarding the obligation to fulfill, members “must take positive action to facilitate the enjoyment of basic human rights.”<sup>178</sup>

### 1. *International Covenant on Civil and Political Rights*

The ICCPR provides a range of protections for civil and political rights.<sup>179</sup> Countries who ratified the ICCPR treaty, like the United States, must protect and preserve basic human rights.<sup>180</sup> Among these human rights are “the right to life and human dignity; equality before the law; freedom of speech, assembly, and association; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; [the] right to family life and family unity; and minority rights.”<sup>181</sup> Further, in accordance with Article Ten of the ICCPR, all detainees must “be treated with humanity and with respect for the inherent dignity of the human person.”<sup>182</sup>

### 2. *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*

The CAT requires countries that ratified the treaty to take measures to end torture within their jurisdictions.<sup>183</sup> In accordance with the CAT,

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<sup>173</sup> *International Human Rights Law*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> (last visited Mar. 24, 2023).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, ACLU (Apr. 2019), <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights art. 10 (Dec. 16, 1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>183</sup> MICHAEL JOHN GARCIA, CONG. RSCH. SERV., RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens 2* (2009).

these countries are required to inform and educate personnel involved in detainee confinement of the convention's anti-torture provisions.<sup>184</sup> Additionally, under the CAT, UN member countries cannot expel, return, or extradite a person to a country if there are substantial grounds to believe that country would subject the person to treatment that arises to torture.<sup>185</sup>

### 3. International Convention on the Elimination of All Forms of Racial Discrimination

The ICERD protects and enforces the right against racial discrimination globally.<sup>186</sup> The ICERD requires countries who ratified the treaty, like the United States, to outlaw all forms of racial discrimination.<sup>187</sup> The prohibition against racial discrimination is absolute, and the ICERD does not tolerate derogation in any circumstance.<sup>188</sup> Under the ICERD, member countries undertake the responsibility to eliminate racial discrimination through all means.<sup>189</sup> The means include the enactment and enforcement of appropriate regulatory programs.<sup>190</sup> Additionally, countries must immediately review and nullify any existing law that creates or perpetuates racial discrimination.<sup>191</sup>

## IV. ANALYSIS

The United States' long and egregious history of eugenics and forced sterilization is not a remnant of the past.<sup>192</sup> The increasing news

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<sup>184</sup> G.A. Res. 39/46, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 10 (Dec. 16, 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> ("Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of . . . persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.").

<sup>185</sup> GARCIA, *supra* note 183, at 2.

<sup>186</sup> Gay McDougall, *The International Convention on the Elimination of All Forms of Racial Discrimination*, U.N. AUDIOVISUAL LIBR. OF INT'L L. 1 (Feb. 2021), [https://legal.un.org/avl/pdf/ha/cerd/cerd\\_e.pdf](https://legal.un.org/avl/pdf/ha/cerd/cerd_e.pdf).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> See generally Dakota Hall, *ICE Sterilizations in Georgia Evoke Tragic Chapters in South's History*, FACING SOUTH (Nov. 19, 2020), <https://www.facingsouth.org/2020/11/ice-sterilizations-georgia-evoke-tragic-chapters-souths-history>; Ko Bragg, *'Belly of the Beast' Spotlights Forced Sterilizations in California Prisons*, THE 19TH (Oct. 15, 2020, 11:37 a.m. PT), <https://19thnews.org/2020/10/belly-of-the-beast-forced-sterilizations-california-prisons>; Jindia, *supra* note 74; Teryn Bouche & Laura Rivard, *America's Hidden History: The Eugenics Movement*, NATURE EDUC. (Sept.

of non-consensual sterilization procedures on immigrant women at the ICDC exemplifies how the United States' history with eugenics is still present in the contemporary world.<sup>193</sup> The ICDC, in facilitating these unnecessary non-consensual medical procedures, violated these detainees' fundamental rights under domestic and international law.<sup>194</sup>

First, DHS, ICE, and the ICDC violated these women's fundamental rights guaranteed under the United States Constitution.<sup>195</sup> They failed to protect the women's health and safety, curtailed their speech about the abuses they suffered, and engaged in several retaliatory actions.<sup>196</sup> Second, the medical abuse inflicted on the women also violated several of the rights enumerated in international treaties.<sup>197</sup> DHS, ICE, and the ICDC violated the detained immigrant women's "right to informed consent, bodily autonomy, and the right to be free from torture and cruel, inhuman, or degrading treatment or punishment."<sup>198</sup>

#### A. VIOLATION OF THE UNITED STATES CONSTITUTION

##### 1. *First Amendment: Right to Free Speech and Right to Petition*

As described above, the First Amendment protects individuals in the nation against retaliation for constitutionally protected speech.<sup>199</sup> DHS, ICE, and the ICDC violated the detained immigrant women's First Amendment rights by retaliating against them for speaking out against the medical abuse they endured at the ICDC.<sup>200</sup> Several women lived in constant fear.<sup>201</sup> To curtail their attempts to speak out, the ICDC staff regularly restricted their access to technology, rationed their food, placed

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18, 2014), <https://www.nature.com/scitable/forums/genetics-generation/america-s-hidden-history-the-eugenics-movement-123919444>.

<sup>193</sup> See generally *id.*

<sup>194</sup> BHATT ET AL., *supra* note 1, at 18.

<sup>195</sup> *Id.* at 18-21.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 21-25.

<sup>198</sup> *Id.* at 18.

<sup>199</sup> *Owen v. Lash*, 682 F.2d 648, 650-53 (7th Cir. 1982) (holding that a ban on prisoner correspondence with newspaper reporters violates the First Amendment); *Franco v. Kelly*, 854 F.2d 584, 590 (2d Cir. 1988) (holding that prisoner stated valid Section 1983 claim by alleging that prison officials filed false charges against him in retaliation for exercising his right to testify and to file administrative grievances).

<sup>200</sup> BHATT ET AL., *supra* note 1, at 21.

<sup>201</sup> COLE, *supra* note 29, at 91 ("Detainees at Irwin are very afraid of retaliatory behavior from the guards . . . [and o]ver two-thirds . . . expressed fear and concern at the possibility of complaining.").

them in solitary confinement, denied them access to prescribed medication, and physically abused them.<sup>202</sup>

The First Amendment undeniably protected the detained immigrant women's actions and speech against retaliation.<sup>203</sup> The ICDC staff directly violated these fundamental rights by engaging in extreme retaliatory practices, such as deportation without due process, to prevent them from speaking out.<sup>204</sup>

## 2. *Fifth Amendment: Due Process of Law*

The Fifth Amendment of the United States Constitution guarantees that the federal government will not deprive any person within the territory of the United States, such as the detained immigrant women, of life, liberty, or property without due process of law.<sup>205</sup> Under the Fifth Amendment, government actors like DHS, ICE, and the ICDC have a duty to protect the health and safety of every person in custody at the ICDC.<sup>206</sup> By permitting non-consensual sterilizations of detained women, these agencies violated their rights to life, liberty, and property.<sup>207</sup>

Detention is an extreme form of government intrusion which is subject to limitations under the Fifth Amendment's Due Process Clause.<sup>208</sup> When a state like Georgia takes immigrants into custody and holds them against their will, the Constitution imposes a corresponding duty to assume some responsibility for the immigrants' safety and general well-being.<sup>209</sup>

The ICDC abridged fundamental rights of the women who underwent non-consensual sterilizations by putting them in substantial risk of serious harm.<sup>210</sup> These women had a right to remain protected while incarcerated.<sup>211</sup> Instead, the ICDC officials stripped them of their ability to reproduce and failed to take the necessary and reasonable precautions to ensure their safety and protection.<sup>212</sup>

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<sup>202</sup> BHATT ET AL., *supra* note 1, at 15-19.

<sup>203</sup> Temporary Restraining Order, *supra* note 107, at 5-15.

<sup>204</sup> *Id.* at 5,7.

<sup>205</sup> U.S. CONST. amend. V.

<sup>206</sup> See generally *id.* (prohibiting deprivation of life, liberty or property of any person without due process of law); BHATT ET AL., *supra* note 1, at 1, 19.

<sup>207</sup> BHATT ET AL., *supra* note 1, at 19.

<sup>208</sup> See U.S. CONST. amend. V; *Dismantling Detention*, HUM. RTS. WATCH (Nov. 3, 2021), <https://www.hrw.org/report/2021/11/03/dismantling-detention/international-alternatives-detaining-immigrants>.

<sup>209</sup> *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989).

<sup>210</sup> Class Action Complaint, *supra* note 2, at 120.

<sup>211</sup> *DeShaney*, 489 U.S. at 199-200.

<sup>212</sup> Class Action Complaint, *supra* note 2, at 120; BHATT ET AL., *supra* note 1, at 1-3.

The ICDC officials subjected detained immigrant women to non-consensual and unnecessary medical procedures, delayed their access to necessary medical care, and engaged in retaliatory actions.<sup>213</sup> For example, Ms. Terrazas Silas, a forty-one-year-old woman from Bolivia who lived in the United States for more than twenty-one years, was one of several women subjected to a non-consensual and medically unwarranted gynecological procedure by Dr. Amin.<sup>214</sup> When Silas first saw Dr. Amin, he conducted a painful gynecological examination on her.<sup>215</sup> After the examination, she experienced lingering side effects such as fevers, nausea, vomiting, diarrhea, and cramps.<sup>216</sup> Unbeknownst to Silas, Dr. Amin had injected her with a birth control shot even though he never asked for her consent.<sup>217</sup>

During her second appointment with Dr. Amin, Silas expressly refused a second birth control shot.<sup>218</sup> Dr. Amin disregarded her request and administered another painful gynecological examination.<sup>219</sup> When Dr. Amin saw Silas a third time for an infection, he conducted yet another painful examination on her.<sup>220</sup> During this third appointment, he informed Silas “he would have to remove her entire uterus because there was a tumor the size of a coconut.”<sup>221</sup> When Silas requested a second opinion, Dr. Amin coerced Silas and told her the surgery was expensive and she should agree to it, so ICE would pay for it.<sup>222</sup> When she continued to refuse the surgery, Dr. Amin stated that he would understand if she was in her twenties or thirties, but she was just an “old woman.”<sup>223</sup>

#### B. VIOLATION OF NATIONAL DETENTION STANDARDS

The ICDC also violated the detained immigrant women’s rights under the PBNDS.<sup>224</sup> Homeland Security inspection reports repeatedly showed that the ICDC continued to violate the PBNDS.<sup>225</sup> According to a March 2020 compliance inspection form, the ICDC had three deficien-

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<sup>213</sup> Class Action Complaint, *supra* note 2, at 1, 21, 24.

<sup>214</sup> *Id.* at 42.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 43.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 100.

<sup>225</sup> O’Toole, *supra* note 31.

cies in environmental health and safety and three deficiencies in medical care.<sup>226</sup>

Specifically, the ICDC failed to abide by PBNDS 4.4, which mandates that facilities provide female detainees with routine gynecological and obstetrical health care and that trained medical personnel provide detainees with impartial advice about family planning and contraception and prescribe medical contraception where medically appropriate.<sup>227</sup> Dr. Amin failed to provide the women with impartial advice, and he performed medically inappropriate gynecological procedures.<sup>228</sup> He administered birth control shots, conducted invasive transvaginal ultrasounds, and performed hysterectomies.<sup>229</sup> One of Dr. Amin's victims stated that it "was only after being deported and consulting with other doctors that [she] discovered that her fallopian tubes had been removed and that she could [not] have any more children."<sup>230</sup>

Dr. Sara Imershein, one of the gynecologists who reviewed the detained women's medical files, stated that Dr. Amin's diagnoses and procedures were "poorly supported" and "not well documented."<sup>231</sup> Although the charts of some women contained symptoms that may justify surgery, there were several other avenues to pursue before resorting to surgery.<sup>232</sup> Dr. Deborah Ottenheimer, another reviewing gynecologist, said Dr. Amin "is overly aggressive in his treatment and does not explore appropriate medical management before turning to procedures or surgical intervention."<sup>233</sup>

Further, the ICDC failed to abide by PBNDS 4.4, which mandates that facilities provide language assistance for detainees with limited English proficiency, either by a translator or by written communication.<sup>234</sup> Dr. Amin and other ICDC medical staff would speak to native Spanish speakers without any translator present.<sup>235</sup> Further, when the women at-

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<sup>226</sup> See U.S. DEP'T OF HOMELAND SEC., OFFICE OF DETENTION OVERSIGHT COMPLIANCE INSPECTION: ENFORCEMENT AND REMOVAL OPERATIONS, ERO ATLANTA FIELD OFFICE, IRWIN COUNTY DETENTION CENTER, OCILLA, GA, MARCH 3-5 2020, at 10, 15 (2020), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/irwinCoDetCntr\\_OcillaGA\\_Mar3-5\\_2020.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/irwinCoDetCntr_OcillaGA_Mar3-5_2020.pdf).

<sup>227</sup> U.S. IMMIGR. AND CUSTOMS ENF'T, *supra* note 155, at 322, 324.

<sup>228</sup> See, e.g., BHATT ET AL., *supra* note 1, at 16-17.

<sup>229</sup> *Id.* at 1.

<sup>230</sup> *Id.* at 15.

<sup>231</sup> Dickerson et al., *supra* note 99.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> U.S. IMMIGR. AND CUSTOMS ENF'T, *supra* note 155, at 322.

<sup>235</sup> Class Action Complaint, *supra* note 2, at 56-58. (stating that no translator was present during Jane's appointment, even though she was a native Spanish speaker who did not speak English).



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tempted to request translators on their own initiative, the ICDC medical personnel refused to provide them with one.<sup>236</sup>

The detained immigrant women often did not understand what Dr. Amin was doing to them.<sup>237</sup> A detained immigrant told Project South that when she spoke to other women who also underwent hysterectomies, the women reacted confusedly when she explained to them what procedure the doctor had performed.<sup>238</sup> After interacting with these women who were similarly perplexed about why they underwent surgery, she likened her experience at the ICDC to an experimental concentration camp where the center was merely experimenting with their bodies.<sup>239</sup>

### C. VIOLATION OF INTERNATIONAL HUMAN RIGHTS

DHS, ICE, and the ICDC violated these women's basic international human rights.<sup>240</sup> These human rights are the right to life and human dignity; freedom of speech, assembly, and association; freedom from torture, ill-treatment, and arbitrary detention; and right to family life.<sup>241</sup> The invasive and non-consensual medical procedures inflicted on detained women were clear examples of how the United States failed to uphold its obligations under international law and the binding treaties, ICCPR, CAT, and ICERD.<sup>242</sup>

#### 1. *Right to Liberty and Security*

Under the ICCPR, DHS, ICE, and the ICDC violated detained women's rights to liberty and security of person.<sup>243</sup> Dr. Amin had performed several invasive gynecological procedures on detained immigrants at the center.<sup>244</sup> Several of these women reported that Dr. Amin, without their informed consent, burned, cut, or removed their en-

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<sup>236</sup> *Id.* at 59 (stating that the medical personnel refused to provide Jane with a translator despite her repeated begs for help).

<sup>237</sup> *Id.* at 59.

<sup>238</sup> Interview by Project South with Immigrant detained at Irwin County Detention Center (Summer 2020), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>.

<sup>239</sup> *Id.*

<sup>240</sup> BHATT ET AL., *supra* note 1, at 18.

<sup>241</sup> *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, ACLU (Apr. 2019), <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>.

<sup>242</sup> BHATT ET AL., *supra* note 1, at 21.

<sup>243</sup> *Id.* at 22.

<sup>244</sup> *See* Class Action Complaint, *supra* note 2, at 10; *see also* Project South, et al., *Re: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center*, PROJECT SOUTH (Sept. 14, 2020), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>.

ture uterus.<sup>245</sup> He told these women that they had tumors or cysts in their uteruses that required surgical removal, but these assertions were false.<sup>246</sup> A team of independent medical professionals who reexamined the medical records verified that the medical procedures were unnecessary.<sup>247</sup>

## 2. Freedom from Torture, Ill-treatment, and Arbitrary Detention

DHS, ICE, and the ICDC violated detained women's rights to be free from torture, ill-treatment, and arbitrary detention under both the ICCPR and CAT.<sup>248</sup> The ICDC subjected these women to cruel, inhumane, and degrading medical procedures that amounted to torture and ill-treatment.<sup>249</sup> Dr. Amin continued to perform unnecessary medical procedures on women at the ICDC at an alarming rate even though he neither obtained their informed consent nor told them what procedure he was performing.<sup>250</sup> Further, not only did he forcibly sterilize the women, but he also did so inhumanely, causing them severe physical and mental anguish.<sup>251</sup> For instance, Y, a woman from Mexico in her mid-thirties, continues to experience post-traumatic stress symptoms when she remembers what Dr. Amin did to her.<sup>252</sup> She stated that the horrific treatment she experienced at ICDC stayed with her.<sup>253</sup>

Whistleblower Wooten also revealed that Dr. Amin once removed “the wrong ovary” when an immigrant woman needed one removed because of a cyst.<sup>254</sup> The woman also stated she was not fully under anesthesia when she heard Dr. Amin tell Wooten that he removed the wrong ovary, so he needed to take out the other one.<sup>255</sup> The immigrant woman ended up with an unwanted full hysterectomy.<sup>256</sup> Additionally, five gynecologists who reviewed the cases of the detained women discovered

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<sup>245</sup> Class Action Complaint, *supra* note 2, at 47-48, 93.

<sup>246</sup> *Id.* at 10-11, 58.

<sup>247</sup> Temporary Restraining Order, *supra* note 107, at 3.

<sup>248</sup> BHATT ET AL., *supra* note 1, at 24.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* at 1, 8.

<sup>251</sup> Class Action Complaint, *supra* note 2, at 58 (Jane Doe #15 “woke up bleeding from the surgery, continued to bleed as the guards brought her back to ICDC, and bled consistently for more than a week thereafter.”).

<sup>252</sup> BHATT ET AL., *supra* note 1, at 6.

<sup>253</sup> *Id.*

<sup>254</sup> Kendall Kohlmeyer, *How the U.S. Government Fails to Protect Migrant Women's Reproductive Rights in Detention Centers*, 33 HASTINGS WOMEN'S L.J. 59, 71 (2022) (quoting Email from Project South to author (Sept. 14, 2020) (on file with author)), <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1465&context=HWlj>.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

that Dr. Amin “consistently overstated the size or risks associated with cysts or masses attached to his patients’ reproductive organs” and that he “seemed to consistently recommend surgical intervention, even when it did not seem medically necessary[,] . . . and nonsurgical treatments options were available.”<sup>257</sup>

### 3. *Freedom of Expression, Assembly, and Association*

The ICDC violated the detained immigrant women’s rights to free expression, assembly, and association under the ICCPR.<sup>258</sup> The ICDC retaliated against them for speaking about the medical abuse to which Dr. Amin subjected them and for protesting the conditions at the center.<sup>259</sup> The ICDC staff infringed on the women’s freedom of expression when they placed the women who spoke out about their experience in medical units or solitary confinement, separated them by transferring them to other cell units, physically assaulted them, rationed their access to water, seized money from their commissary accounts, and limited or turned off their access to technology.<sup>260</sup> The ICDC staff also infringed on the women’s rights of free expression and association when they monitored their calls and abruptly cut the phone line when the women attempted either to speak with reporters on the phone or mention the hunger strikes or the medical treatment.<sup>261</sup>

### 4. *Right to Family Life*

Under the ICCPR, the ICDC violated the detained immigrant women’s rights to family life, guaranteeing the ability and choice to procreate.<sup>262</sup> Several of the non-consensual procedures Dr. Amin ordered directly interfered with this right.<sup>263</sup> Dr. Amin performed hysterectomies on the women, which left the women unable to have children.<sup>264</sup> He also gave women Depo-Provera birth control shots and invasive transvaginal ultrasounds.<sup>265</sup> As a result, DHS, ICE, and the ICDC failed to protect these women’s rights to family life by denying them the ability to “de-

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<sup>257</sup> Dickerson et al., *supra* note 99.

<sup>258</sup> Class Action Complaint, *supra* note 2, at 25.

<sup>259</sup> *Id.* at 1-2.

<sup>260</sup> *Id.* at 1.

<sup>261</sup> *Id.* at 1-2.

<sup>262</sup> BHATT ET AL., *supra* note 1, at 23.

<sup>263</sup> *Id.*

<sup>264</sup> Tina Vásquez, *Exclusive: FBI Investigates Georgia Doctor Accused of Sterilizing Detained Women*, PRISM (May 6, 2021), <https://prismreports.org/2021/05/06/exclusive-fbi-investigates-georgia-doctor-accused-of-sterilizing-detained-women/>.

<sup>265</sup> BHATT ET AL., *supra* note 1, at 2.

cide freely and responsibly on the number and spacing of their children.”<sup>266</sup>

## V. RECOMMENDATIONS

The Georgia General Assembly should enact legislation prohibiting the sterilization of any individual involuntarily confined or detained in its state because Georgia has a duty to protect individuals' fundamental right to body autonomy.<sup>267</sup> Non-consensual sterilizations are invasive and interfere with a woman's right to procreate.<sup>268</sup> Although this Comment proposes potential recommendations to Georgia's state legislature, the federal government could also adopt similar national policies.<sup>269</sup> However, passing legislation through Congress is a lengthy process.<sup>270</sup> Further, it can be challenging to garner widespread support to ensure federal statutes take effect, particularly for immigration law.<sup>271</sup> Therefore, this Comment recommends a more targeted and narrow solution for Georgia, which can eventually lead to federal legislation.<sup>272</sup>

Georgia should follow in California's footsteps and model its legislation after section 3440 of the California Model Penal Code.<sup>273</sup> Similar to section 3440, Georgia should prohibit the sterilization of any individual imprisoned in its state, except when the procedure is medically necessary to preserve the individual's life in an emergency or to treat a diagnosed condition.<sup>274</sup> If a sterilization procedure is performed according to an exception, Georgia should require the department to abide by

<sup>266</sup> *Id.* at 23.

<sup>267</sup> See U.S. CONST. amend. X (establishing the division of police power, stating that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”).

<sup>268</sup> BHATT ET AL., *supra* note 1, at 23.

<sup>269</sup> See *ArtI.S8.C18.8.1 Overview of Congress's Immigration Powers*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/artI-S8-C18-8-1/ALDE\\_00001255/#:~:text=Even%20so%2C%20the%20Supreme%20Court's,implicate%20matters%20of%20national%20security](https://constitution.congress.gov/browse/essay/artI-S8-C18-8-1/ALDE_00001255/#:~:text=Even%20so%2C%20the%20Supreme%20Court's,implicate%20matters%20of%20national%20security) (last visited Mar. 24, 2023) (“Congress retains broad power to regulate immigration and [ ] the [Supreme] Court will accord substantial deference to the government's immigration policies.”).

<sup>270</sup> See *How a Bill Becomes a Law*, U.S. HIST., <https://www.ushistory.org/gov/6e.asp#:~:text=before%20a%20bill%20becomes%20a,a%20period%20of%20one%20year> (last visited Mar. 24, 2023) (stating that a bill must pass both houses of Congress and be signed into law by the president before it becomes law).

<sup>271</sup> See Leonardo Poareo, *Breakdown: Why Immigration Reform Is So Hard To Pass*, DAILY CHELA (Mar. 15, 2023), <https://www.dailychela.com/immigration-reform-is-so-hard-to-pass/>.

<sup>272</sup> *ArtI.S8.C18.8.1 Overview of Congress's Immigration Powers*, *supra* note 269.

<sup>273</sup> See CAL. PENAL CODE § 3440 (2016) (prohibiting sterilization of any individual involuntarily confined in state facilities, except when the procedure is medically necessary to preserve the individual's life in an emergency or with individual's consent to treat a diagnosed condition).

<sup>274</sup> PENAL § 3440(b).

additional requirements.<sup>275</sup> First, the law should require psychological consultation and medical follow-up.<sup>276</sup> Second, the law should require the government to publish statistics on the number of sterilizations carried out annually, broken down by race, age, medical rationale, and sterilization method.<sup>277</sup> Third, the law should mandate that the department inform detainees of their rights and medical service staff members of their obligations with regard to the sterilization of inmates.<sup>278</sup> However, unlike section 3440, which only applies to detainees in state prisons or jails and not detainees in ICE facilities operated by local governments and private prison corporations, Georgia should extend the law to apply to all detainees regardless of their immigration status.<sup>279</sup> By extending the sterilization ban to detained immigrants, the law will protect them from the types of medical abuses that have harmed them for decades.<sup>280</sup>

Additionally, the General State Assembly should codify the PBNDS.<sup>281</sup> Despite ICE's commitment to reform the immigration detention system with the PBNDS, noncompliance with the PBNDS remains widespread because the federal government has never codified the PBNDS as a law or regulation.<sup>282</sup> Therefore, by codifying the PBNDS and making it legally enforceable in the state, Georgia can dramatically reduce the noncompliance.<sup>283</sup>

In enacting such laws, Georgia will not contradict or conflict with federal immigration law or policy.<sup>284</sup> Implementing such legislation will only elucidate the existing domestic and international law on an individual's bodily autonomy over their reproductive life, free of coercion, violence, or the fear of violence.<sup>285</sup> Such clarification is necessary in light of the pattern of illegal sterilizations occurring in detention institutions like the ICDC.<sup>286</sup>

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<sup>275</sup> PENAL § 3440(c)-(e).

<sup>276</sup> PENAL § 3440(c) (mandating presterilization and poststerilization psychological consultation and medical follow up).

<sup>277</sup> PENAL § 3440(d) (requiring the department to "annually publish on its Internet Web site data related to the number of sterilizations performed, disaggregated by race, age, medical justification, and method of sterilization.").

<sup>278</sup> PENAL § 3440(e) (directing the department to provide detainees and employees involved in providing health care services of their rights and responsibilities).

<sup>279</sup> PENAL § 3440(b).

<sup>280</sup> See Project South, et al., *supra* note 244, at 2.

<sup>281</sup> See Rabin, *supra* note 156.

<sup>282</sup> *Id.*; U.S. DEP'T OF HOMELAND SEC., *supra* note 226, at 4 (During the Office of Detention Oversight's compliance inspection of ICDC, it discovered twenty-six deficiencies).

<sup>283</sup> *Id.*; O'Toole, *supra* note 31;

<sup>284</sup> See generally *Skinner*, 316 U.S. at 541 (finding that procreation is "fundamental to the very existence and survival of the race.").

<sup>285</sup> See BHATT ET AL., *supra* note 1, at 18, 21, 23.

<sup>286</sup> See Class Action Complaint, *supra* note 2, at 1-2; Dickerson et al., *supra* note 99; O'Toole, *supra* note 31; Project South, et al., *supra* note 244, at 1-2.

## CONCLUSION

Americans cannot afford to forget the invasive and non-consensual procedures these immigrant women underwent.<sup>287</sup> The practice of forced sterilization in detention centers exemplifies how eugenics is still alive and well in the modern era.<sup>288</sup> As seen by the incidents in Georgia, incarcerated people—often members of marginalized communities—are at risk of having their right to reproduce stripped away.<sup>289</sup> The immigrant women detained in Georgia deserve adequate assurances that the types of medical abuses that have plagued them for decades will not reoccur to them or anyone imprisoned in Georgia.<sup>290</sup>

Thus, Georgia should follow in California's footsteps and prohibit the sterilization of any individual imprisoned in its state,<sup>291</sup> regardless of immigration status, and codify the PBNDS.<sup>292</sup> Enacting such a law will make it clear that non-consensual and medically unnecessary sterilizations are a grave violation of fundamental human rights.<sup>293</sup> It will protect the rights of particularly vulnerable populations within the coercive environment of detention centers. Further, legislation requiring departments to record sterilizations conducted under one of the limited exceptions will also allow for more public oversight, ensuring that detention institutions do not try to limit or disregard a detained immigrant's right to procreate.<sup>294</sup> Such laws will ultimately ensure that detained immigrant women have complete autonomy over their reproductive life, free of coercion, violence, or the fear of violence.<sup>295</sup>

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<sup>287</sup> Class Action Complaint, *supra* note 2, at 1.

<sup>288</sup> Evans, *supra* note 79.

<sup>289</sup> *Id.*

<sup>290</sup> BHATT ET AL., *supra* note 1, at 26.

<sup>291</sup> See PENAL § 3440 (prohibiting the sterilization of any inmate in state or county jails).

<sup>292</sup> See PENAL § 3440; Rabin, *supra* note 156.

<sup>293</sup> See, e.g., BHATT ET AL., *supra* note 1, at 18 (“The medical abuse inflicted on these women [ ] violates fundamental human rights, including the right to informed consent, bodily autonomy, and the right to be free from torture and cruel, inhuman, or degrading treatment or punishment.”).

<sup>294</sup> See PENAL § 3440(d) (mandating the department to annually publish on its Internet Web site data related to the number of sterilizations performed, if any, disaggregated by race, age, medical justification, and method of sterilization).

<sup>295</sup> See BHATT ET AL., *supra* note 1, at 1, 19, 25; Class Action Complaint, *supra* note 2, at 1, 24, 25, 28.

