



Boston University School of Law



Community Health Law Partnership Clinic  
School of Law  
UNIVERSITY OF GEORGIA



Columbia Law School  
Immigrants' Rights Clinic

**PRACTICE ADVISORY:<sup>1</sup>**  
**Advocating for Immigrant Survivors of Medical Abuse**  
**at the Irwin County Detention Center**

May 4, 2021

**TABLE OF CONTENTS**

Part I: Introduction to the Guide .....2

Part II: Advisory Guides .....7

    A. FTCA Administrative Claims.....7

    B. Requesting a Stay of Removal from ICE.....13

    C. Department of Homeland Security Civil Rights and Civil Liberties Complaints .....15

    D. U Nonimmigrant Visas.....18

Part III: Appendices.....22

    Appendix A: FTCA Admin Complaint Template.....22

    Appendix B: Stay of Removal Template .....33

    Appendix C: DHS CRCL Complaint Template.....39

    Appendix D: U Visa Request Template.....45

---

<sup>1</sup> This practice advisory is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). This advisory was drafted by the Boston University School of Law Immigrants’ Rights and Human Trafficking Program, Associate Director Sarah Sherman-Stokes and law students Maggie Lovric, Megan Sullivan, and Kayla Walker; the Columbia Law School Immigrants' Rights Clinic, Director Elora Mukherjee and law student Sara Tofighbakhsh; the University of Georgia School of Law Community Health Law Partnership Clinic, Director Jason Cade, Staff Attorney Kristen Shepherd, and law student Frederick King; the Harvard Law School Immigration and Refugee Clinical Program, Director Sabrineh Ardalan and law student Rachel Cohen; the Texas A&M University School of Law Immigrant Rights Clinic, Director Fatma Marouf; and the National Immigration Project of the National Lawyers Guild, Joseph Meyers and Amber Qureshi

Practice advisories identify select substantive and procedural immigration law issues that attorneys, legal representatives, and noncitizens face. They are based on legal research and may contain potential arguments and opinions of the authors. Practice advisories do not replace independent legal advice provided by an attorney or representative familiar with a client’s case.

## **PART I: INTRODUCTION TO THE GUIDE**

### **A. Introduction**

This practice advisory is intended to assist individuals seeking damages, stays of deportation, and long-term immigration relief based on medical abuse suffered at ICDC. This practice advisory explains how to determine eligibility and file administrative claims under the Federal Torts Claims Act (“FTCA”) for monetary damages, stays of removal with Immigration and Customs Enforcement (“ICE”), administrative complaints with the DHS Office for Civil Rights and Civil Liberties (“CRCL”), and U Visa certification requests for survivors of sexual violence and other medical abuse. The practice advisory contains sample filings and guidance for immigrants with and without representation.

Immigrants held at Irwin County Detention Center (“ICDC”) have faced extraordinary medical abuse, including involuntary and invasive gynecological procedures at the hands of Dr. Mahendra Amin, during their time in detention.<sup>2</sup> These abuses, which are the subject of ongoing investigation and litigation,<sup>3</sup> are consistent with a broad pattern of human rights violations at ICDC and numerous other immigration detention centers across the country.<sup>4</sup>

---

<sup>2</sup> See Complaint from Project South, Georgia Detention Watch, Georgia Latino Alliance for Human Rights & South Georgia Immigrant Support Network to Joseph V. Cuffari, Cameron Quinn, Thomas P. Giles & David Paulk, *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* 18–20 (Sept. 14, 2020) (“Project South Complaint”), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>

<sup>3</sup> See National Immigration Project, National Lawyers Guild, *Oldaker v. Giles*, [https://nipnlg.org/our\\_lit/impact/2020\\_21Dec\\_lit-oldaker-v-giles.html#:~:text=Oldaker%20v.-,Giles,County%20Detention%20Center%20in%20Georgia.&text=The%20women%20are%20represented%20by,South%2C%20and%20Dreyer%20Sterling%20LLC](https://nipnlg.org/our_lit/impact/2020_21Dec_lit-oldaker-v-giles.html#:~:text=Oldaker%20v.-,Giles,County%20Detention%20Center%20in%20Georgia.&text=The%20women%20are%20represented%20by,South%2C%20and%20Dreyer%20Sterling%20LLC; see also); see also Complaint, *Oldaker v. Giles*, 20-cv-00224 (M.D. Ga. Dec. 21, 2020), [https://nipnlg.org/PDFs/practitioners/our\\_lit/impact\\_litigation/2020\\_21Dec\\_oldaker-v-giles-complaint.pdf](https://nipnlg.org/PDFs/practitioners/our_lit/impact_litigation/2020_21Dec_oldaker-v-giles-complaint.pdf)

<sup>4</sup> See, e.g., Project South & Penn State Law Ctr. for Immigrants’ Rights Clinic, *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers* 5–6 (May 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); Tanya Eiserer, *Jailed to death: False Paperwork, Deaths Widespread in N. Texas for-profit’s Jails*, WFAA (June 29, 2020, 4:42 PM), <https://www.wfaa.com/article/news/local/investigates/jailed-to-death-false-paperwork-deaths-widespread-in-n-texas-for-profits-jails/287-610400876> (quoting Lance Lowry, expert on the Texas prison industry and former president of the Texas Correctional Employees union: “This is a company that puts profit over human lives.”). Just one week after Project South filed its complaint with DHS Office of Inspector General, the U.S. House Committee on Homeland Security issued a report, in which it specifically noted the ongoing abuses committed at facilities owned and operated by LaSalle Corrections. U.S. House of Representatives, Comm. on Homeland Sec., *ICE Detention Facilities: Failing to Meet Basic Standards of Care* 11 (Sept. 21, 2020), accessible at <https://homeland.house.gov/activities/other-events/ice-detention-facilities-failing-to-meet-basic-standards-of-care>.

Many detention centers in the U.S., including ICDC, are run by for-profit private corporations with a history of medical neglect, abuse, and mismanagement. Reports have repeatedly documented lack of adequate medical care, abysmal conditions, including inedible food, vermin, and roaches, and lack of access to legal services, as well as other abusive and inhumane treatment.<sup>5</sup> Immigrants must often wait for weeks to receive an appointment with medical staff and are routinely denied access to medical care and medication.<sup>6</sup> ICDC has unreasonably delayed providing medical care, including failing to provide necessary cancer treatment, pain medication, and treatments for diabetes and high blood pressure.<sup>7</sup> Some of those who sought medical care at ICDC faced retaliation, including physical abuse and placement in solitary confinement.<sup>8</sup> ICDC staff also fabricated medical records and accused detained immigrants of overstating their symptoms.<sup>9</sup> The COVID-19 pandemic has exacerbated these inhumane conditions, exposing the immigrants detained at ICDC to an even greater risk of physical and mental harm.

Even when immigrants detained at ICDC are able to obtain medical care, there has been a troubling pattern of medical abuse and neglect.<sup>10</sup> Immigrants consistently report medical mistreatment and inadequate care, including cursory medical treatment that fails to respond to health concerns and unnecessary and/or involuntary medical, gynecological, and dental procedures, performed without informed consent.<sup>11</sup> In October 2020, an independent team of medical experts, including board-certified obstetricians, reviewed the medical records of 19 women at ICDC and found a significant pattern of incorrect diagnoses and failures to secure informed consent for procedures.<sup>12</sup> The Department of Homeland Security (“DHS”) has itself reported serious failures by medical staff at ICDC to complete required trainings and

---

<sup>5</sup> *Imprisoned Justice*, *supra*, at 40–51.

<sup>6</sup> *Id.* at 48–49.

<sup>7</sup> ACLU-GA, *Prisoners of Profit* 89–90 (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) [hereinafter *Prisoners of Profit*].

<sup>8</sup> *Imprisoned Justice*, *supra*, at 48–49. *See also Prisoners of Profit*, *supra*, at 91 (noting that “[o]ver two-thirds of the detainees interviewed expressed fear and concern” about retaliatory behavior including being placed in solitary: “[I]f you complain, it only gets worse.”); Detention Watch Network, *A Toxic Relationship: Private Prisons and U.S. Immigration Detention* 5 (2016), accessible at <https://www.detentionwatchnetwork.org/pressroom/reports/2016/toxic-relationship-private-prisons-immigration-detention> (documenting misuse and overuse of solitary confinement at ICDC in other contexts).

<sup>9</sup> Project South Complaint, *supra*, 15–18.

<sup>10</sup> *See* Project South Complaint, *supra*, at 16–17.

<sup>11</sup> *See, e.g. Imprisoned Justice*, *supra*, at 5–6; *Oldaker Complaint*, *supra*.

<sup>12</sup> Molly O’Toole, *19 women allege medical abuse in Georgia immigration detention*, LOS ANGELES TIMES (Oct. 22, 2020), <https://www.latimes.com/politics/story/2020-10-22/women-allege-medical-abuse-georgia-immigration-detention>.

documented serious health and safety violations at ICDC, including unsanitary conditions in medical unit cells.<sup>13</sup>

Because of the abuse they suffered, many women who were detained at ICDC may be eligible for monetary damages and some forms of immigration relief, which are described below.

## **B. Overview of Strategies for Seeking Relief for Immigrants Detained at ICDC Who Were Subjected to Medical Abuse**

Women who were detained at ICDC experienced horrific abuse and may now be entitled to monetary compensation and/or immigration relief. This includes monetary damages under the Federal Tort Claims Act; stays of removal; and more permanent immigration status, such as U Nonimmigrant Visas. This practice advisory and accompanying materials are intended to assist those who experienced medical abuse while detained at ICDC, as well as their loved ones, lawyers, and other advocates, obtain that relief. In addition to this overview, the advisory includes detailed practice guides for four kinds of relief: FTCA claims, stays of removal, complaints with the DHS Office of Civil Rights and Civil Liberties; and U Visas for victims of crimes. Finally, it includes sample petitions for each of these forms of relief.

**This practice advisory and the accompanying materials do not constitute legal advice and should not be a substitute for the individual, case specific counsel of an attorney.**

We are committed to helping victims of abuse at ICDC obtain every form of redress they are entitled to. Please do not hesitate to contact Joseph Meyers at the National Immigration Project of the National Lawyers Guild, [jmeyers@nipnlg.org](mailto:jmeyers@nipnlg.org), if you have any questions or need any further information.

### **1. FTCA Claims**

The Federal Tort Claims Act (“FTCA”) allows you to claim damages for injuries or death caused by the federal government based on negligent acts or omissions of federal employees or, in some cases, intentional misconduct of federal employees.<sup>14</sup> The FTCA allows you to pursue monetary damages in federal court against the U.S. government, after filing a required administrative claim. Women who were subject to psychological, medical and/or dental abuse

---

<sup>13</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Inspections and Detention Oversight Division, Compliance Inspection, Enforcement and Removal Operations, ERO Atlanta Field Office, Irwin County Detention Center, Ocilla, Georgia at 6 (Mar. 7–9, 2017), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2017IrwinCountyGA.pdf>; U.S. Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Inspections and Detention Oversight Division, Compliance Inspection, Enforcement and Removal Operations, ERO Atlanta Field Office, Irwin County Detention Center, Ocilla, Georgia at 15 (Mar. 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>14</sup> See 28 U.S.C. §§ 1346(b), 2671 et seq.; 28 C.F.R. §§ 14.1-14.11.

while detained at ICDC likely have viable FTCA claims against the government. With few exceptions, these claims are time sensitive and must be filed with the appropriate federal agency within 2 years of the alleged misconduct.

## **2. Stays of Removal with ICE**

Noncitizens with final orders of removal can request stays of removal from ICE. A stay is a discretionary measure that ICE can take to choose not to deport someone for up to one year. Stays can be renewed by reapplying after the stay period has ended or when the stay period is close to ending. ICE can choose to grant a stay for any number of reasons, including because someone is a plaintiff or witness in a civil rights case (like the one against ICDC), has medical concerns, or has strong family ties in the United States.

## **3. DHS CRCL Claims**

CRCL is a unit within DHS that is tasked with investigating violations of individuals' civil rights.<sup>15</sup> The CRCL office does not provide legal remedies, but it does investigate allegations of abuse within the agency. These investigations give DHS the opportunity to address issues within their agency and DHS may elect to put a hold on a woman's deportation while the investigation is ongoing. Women who were subject to medical abuse at ICDC may wish to file a CRCL claim.

## **4. U Visa Certification Request**

U Nonimmigrant status, often referred to as a U Visa, is available for victims of certain crimes, including those who have suffered mental or physical abuse, and who have been helpful, or are willing to be helpful, to law enforcement or government officials in the investigation or prosecution of that criminal activity.<sup>16</sup> Survivors of abuse at ICDC may be eligible for U Visas based on their abuse, as outlined below.

## **C. Sample Materials**

Included as appendices to this practice advisory are sample filings addressing medical abuse at ICDC in each of these advocacy contexts. They are as follows:

### **Appendix A: Sample FTCA Claim with instructions and attachments**

---

<sup>15</sup> 6 U.S.C. § 345; 42 U.S.C. § 2000ee-1, 29 U.S.C. § 794.

<sup>16</sup> There is no fee to file form I-918 Petition for U Nonimmigrant Status with USCIS. This form must be filed before determining whether a person is eligible for U Status. USCIS estimates waiting times to process the initial Form I-918 petition to be 58 to 58.5 months (4.8 years). See *Processing Time for Petition for U Nonimmigrant Status (I-918) at Vermont Service Center*, USCIS, <https://egov.uscis.gov/processing-times/> (last visited Feb. 12, 2021).

- Appendix B:** Sample ICE Stay of Removal with instructions and attachments
- Appendix C:** Sample DHS CRCL Claim with instructions and attachments
- Appendix D:** Sample U Visa Certification Request with instructions and attachments

## **PART II: ADVISORY GUIDES**

### **A. FTCA Administrative Claims**

#### **1. What is an FTCA Claim?**

An FTCA claim authorizes administrative claims and federal lawsuits for monetary damages against the United States government based on negligent acts or omissions of federal employees or, in some cases, intentional misconduct of federal employees.<sup>17</sup>

#### **2. What Type of Conduct is Covered by the FTCA?**

The FTCA covers negligent conduct by officers and employees of federal agencies, including DHS and its component agency ICE.<sup>18</sup> The FTCA does *not* authorize actions against contractors of federal agencies, which includes doctors who are contracted by ICE.<sup>19</sup> However, the U.S. Government may be liable under the FTCA if a federal employee fails to prevent tortious conduct of contract employees acting under federal supervision or if a federal employee places a detained individual in the care of a contract employee or contract facility.<sup>20</sup>

Under the FTCA, the U.S. Government is liable for the negligent acts of its employees and for certain intentional torts committed by investigative and law enforcement officers where the acts committed are within the scope of the federal employee's or law enforcement officer's employment or office.<sup>21</sup> An intentional tort is one in which the defendant acted with substantial certainty that their actions would injure the plaintiff or acted with a subjective motive to cause harm.<sup>22</sup> Under the FTCA, the U.S. Government is liable for certain torts, under the law of the state "where the act or omission occurred."<sup>23</sup>

---

<sup>17</sup> See 28 U.S.C. §§ 1346(b), 2671 et seq.; 28 C.F.R. §§ 14.1-14.11.

<sup>18</sup> 28 U.S.C. §§ 1346(b)(1), 2671 (defining "federal agency" and "employee of the government"), 2680(h) (defining "investigative or law enforcement officer").

<sup>19</sup> See 28 U.S.C. § 2671.

<sup>20</sup> See *United States v. Shearer*, 473 U.S. 52, 56 (1985) (plurality opinion) ("[T]he Government may be held liable for negligently failing to prevent the intentional torts of a nonemployee under its supervision.").

<sup>21</sup> 28 U.S.C. § 1346(b)(1) (negligent torts); 28 U.S.C. § 2680(h) (intentional torts).

<sup>22</sup> *Jandro v. Ohio Edison Co.*, 167 F.3d 309, 313 (6th Cir. 1999); *Miller v. J.D. Abrams Inc.*, 156 F.3d 598, 604 (5th Cir. 1998).

<sup>23</sup> 28 U.S.C. § 1346(b)(1).

Medical care in immigration detention facilities is often handled by private contractors. Thus, because actions of federal contractors are not covered by the FTCA, an FTCA claim alleging wrongdoing in medical care must allege claims arising from federal employees' failure to prevent tortious conduct of the doctor, negligent hiring or training of the doctor.<sup>24</sup> Claimants may also allege they were negligently placed in the care of a contracted doctor or medical facility.<sup>25</sup> Plaintiffs may also bring state law claims directly against the private medical care provider, in addition to FTCA claims against federal defendants.

### 3. Why File an FTCA Claim?

An FTCA claim may enable you to recover money damages from the United States based on the misconduct of federal employees. Also, an FTCA claim may improve your immigration options. During President Obama's administration, ICE was advised that they could decline to deport individuals who were in the process of protecting their civil rights or liberties.<sup>26</sup> Because an FTCA claim may seek vindication of an individual's civil rights and liberties, filing an FTCA claim provides an independent basis to petition ICE for a stay of removal, deferred action, release from detention, withdrawal of a detainer, rescission of a Notice to Appear, termination of proceedings, or a joint motion to administratively close a case.<sup>27</sup> Recently, the current DHS

---

<sup>24</sup> Note, however, that in some circuits negligent training, supervision, and hiring claims are not available against federal defendants under the FTCA. Ninth Circuit courts, for example, have consistently held that decisions of how to train, supervise, and hire employees falls under the discretionary function exception to FTCA liability. *See Vickers v. United States*, 228 F.3d 944, 950 (9th Cir. 2000); *Est. of Cruz-Sanchez by & through Rivera v. United States*, No. 17-CV-569-AJB-NLS, 2018 WL 3239340, at \*6 (S.D. Cal. July 2, 2018). *But see Conrad v. United States*, 447 F.3d 760, 765 (9th Cir.2006) (the discretionary function bar only applies if the "decision made is a permissible exercise of policy judgement"); *Plascencia v. United States*, No. EDCV1702515JGBSPX, 2018 WL 6133713, at \*7 (C.D. Cal. May 25, 2018) (listing cases in support of the proposition that the discretionary function bar does not apply to actions in violation of statutory or constitutional rights).

<sup>25</sup> *Sandoval v. United States*, 980 F.2d 1057, 1059 (stating that the Supreme Court "did not rule out liability based on the negligent acts of the Government's employees in placing [an] inmate into the care of the contractor.")

<sup>26</sup> *See* John Morton, Office of Dir., U.S. Immigration and Customs Enforcement, Policy Number 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011) ("Morton Memo"), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>; *see also* Matthew T. Albence, Office of Dir., U.S. Immigration and Customs Enforcement, *Letter to Congress Regarding U Nonimmigrant Status (U Visa) Cases* (Sept. 27, 2019) (stating that Morton Memo "remains in effect"), <https://asistahelp.org/wp-content/uploads/2019/10/ICE-Letter-to-Rep.-Castro-September-2019.pdf>.

<sup>27</sup> *Id.* at 2.



Secretary released a memorandum stating that the Biden administration would assess policies governing “the exercise of discretion.”<sup>28</sup>

In some cases the government may settle FTCA cases in federal court for immigration relief. An FTCA claim may also increase an individual’s chances of obtaining a U Visa, which provides lawful status and a path to permanent residency for undocumented individuals who were victims of a crime and who cooperate with law enforcement.<sup>29</sup> As part of a settlement agreement, the federal agency whose misconduct prompted an FTCA claim may, but is not required to, sign the certification form necessary to complete a U Visa application. If the federal agency does not settle the claim, but a claimant succeeds in federal court, the claimant may file a motion asking the federal court judge to sign the certification form.<sup>30</sup>

Outside of individual benefits to the claimant, the filing of FTCA claims may also lead to positive structural change. For example, FTCA claims can lead to accountability for federal agencies and officers who commit misconduct, encourage agency-wide change, and increase public awareness that could put pressure on agency leaders to reform their practices.

#### **4. How to File an FTCA Claim?**

To file an FTCA claim, a claimant must first file an administrative claim with the relevant federal agency or agencies responsible for the misconduct.<sup>31</sup> An FTCA administrative claim must be filed within 2 *years* of the incident providing the basis for an individual’s complaint.<sup>32</sup> In some rare cases, a claimant may file after the 2 year deadline under the “equitable tolling” doctrine, but this is generally only available in extraordinary circumstances that are both beyond the claimant’s control and unavoidable even with diligence, so claimants should make every

---

<sup>28</sup> David Pekoske, Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities, DHS (Jan. 20, 2021), available at [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).

<sup>29</sup> See 8 U.S.C. §§ 1101(a)(15)(U), 1184(p).

<sup>30</sup> See, e.g., *Villegas v. Metro. Gov’t of Nashville & Davidson Cty*, 907 F. Supp. 2d 907, 914 (M.D. Tenn. 2012) (granting plaintiff’s motion for a U visa certification in damages action under 42 U.S.C. § 1983); *Garcia v. Audubon Communities Mgmt., LLC*, No. CIV.A. 08-1291, 2008 WL 1774584 (E.D. La. Apr. 15, 2008) (granting plaintiffs’ motion to certify U Visa in Trafficking Victims Protection Act and Fair Labor Standards Act case)

<sup>31</sup> 28 C.F.R. § 14.2(b)(1).

<sup>32</sup> 28 U.S.C. § 2401(b).

effort to file within the 2 year deadline.<sup>33</sup> An FTCA claim can be filed in writing using a Standard Form 95 (“SF-95”) or a letter.<sup>34</sup> The form or letter must provide a written notification of the incident and a specific amount of monetary damages claimed.<sup>35</sup> The amount of monetary damages claimed should be carefully considered because, with few exceptions, a judgement in federal court cannot exceed the amount stated in the administrative claim.<sup>36</sup> In calculating damages, it is advisable to conduct research into comparable awards. You may find resources for doing so here:

- The U.S. Treasury Department’s Judgment Fund, available at: <https://fiscal.treasury.gov/judgment-fund/> allows users to search administrative claim awards and settlement amounts. This can be a useful source to help inform the calculation of damages.
- Westlaw and LEXIS have legal databases on jury verdicts and settlements that provide useful information on damages amounts for the same or comparable torts awarded by the relevant state courts or in settlement agreements; and
- Prison Legal News has a searchable database of articles on verdicts and settlements, available at <https://www.prisonlegalnews.org/Search.aspx>.

If an attorney prepares the FTCA claim, it must be presented in the claimant’s name, be signed by the attorney, and show the attorney’s title or legal capacity with evidence of their authority to bring the claim on the claimant’s behalf.<sup>37</sup> An administrative FTCA claim need not identify the alleged torts under state law.

## 5. Where to File an FTCA Claim?

An FTCA claim must be filed with the federal agency “whose activities gave rise to the claim.”<sup>38</sup> For those filing claims based on mistreatment while in immigration custody, claims should be filed with (1) the DHS Office of General Counsel and (2) general counsel for the DHS subagency employing the officer(s) at the time of the incident that forms the basis of the claim. For example, if the claim arises from an individual’s detention in ICE custody, a claim should be

---

<sup>33</sup> See *United States v. Kwai Fun Wong*, 575 U.S. 402, 405, 412 (2015). In the Eleventh Circuit, a plaintiff seeking equitable tolling has the burden of showing that “his untimely filing was ‘because of *extraordinary circumstances* that are both beyond his control and unavoidable even with diligence.’” *Echemendia v. United States*, 710 Fed.App’x 823, 827 (11th Cir. 2017) (citations omitted).

<sup>34</sup> 28 U.S.C. § 2401(b); 28 C.F.R. § 14.2(a). A digital copy of Form SF-95 is available at <https://www.gsa.gov/forms-library/claim-damage-injury-or-death>.

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

<sup>36</sup> 28 U.S.C. § 2675(b).

<sup>37</sup> 28 C.F.R. § 14.2(a).

<sup>38</sup> 28 U.S.C. § 2401(b).

sent to (1) the office of general counsel for DHS and (2) the office of the principal legal advisor for ICE. If the claim is related to medical care, and the medical care was provided by the U.S. Public Health Service, a copy of the claim should also be sent to the Department of Health and Human Services. The receiving agency will designate a lead agency after receipt of the FTCA claim.<sup>39</sup>

## **6. What Can I Expect After Filing?**

After an individual files an FTCA claim with the relevant federal agency, the claimant or counsel may receive a letter acknowledging receipt of the claim and assigning a point of contact. In some cases, a notice of receipt may be received several weeks or months after filing. In other cases, no receipt is provided at all. The receiving agency may take one of three approaches to an FTCA Claim:

- (1) The agency may send a notice of denial of the claim. This denial starts the six-month clock to file an action in federal court.
- (2) The agency may do nothing. If the agency does nothing for six months after filing, a claim is considered denied and an action may be filed in federal court.
- (3) The agency may engage in settlement negotiations by making a settlement offer or asking for more information to assess settlement possibilities. Such settlement negotiations may be conducted by email, letter, telephone call, or some combination of the three. If a settlement is reached, the parties sign a formal settlement agreement. If a settlement agreement is not reached, the agency issues a denial notice, which starts the six-month clock to file in federal court.

Those who wish to begin settlement negotiations can proactively contact agency counsel after filing an administrative complaint. If settlement negotiations are not progressing as the claimant wishes and a claimant and their counsel are eager to file in court, they can reach out to agency counsel to request a final notice denying the FTCA administrative claim.

A claimant may amend their claim at any time before the agency's final disposition or before filing suit in federal court, provided that the amendment is in writing and signed by the claimant or counsel.<sup>40</sup> But doing so restarts the six-month clock: agencies have six months from the filing of an amendment to make a final disposition.<sup>41</sup>

---

<sup>39</sup> See generally 28 C.F.R. § 14.2(b).

<sup>40</sup> 28 C.F.R. § 14.2(c).

<sup>41</sup> *Id.*

If an agency does not elect to settle the claim, it will make a “final denial” of the claim. An agency issues a final denial either (1) by denying the claim and providing notice of such denial, or (2) by failing to act on the claim within six months.<sup>42</sup> If the agency denies your FTCA administrative claim, you can file a written request with the lead agency for reconsideration or you can file a complaint in federal district court.<sup>43</sup> For more information on FTCA litigation in federal court, please see the National Immigration Project of the National Lawyers Guild’s FTCA Advisory, available at: <https://immigrationlitigation.org/wp-content/uploads/2021/02/2021.2.17-FTCA-PA-FINAL.pdf>.

## **7. Filing an FTCA Claim Based on Abuse at the Irwin County Detention Center**

Anyone wishing to file an FTCA Claim based on abuse suffered at the Irwin County Detention Center (“ICDC”) should first complete a **SF-95**. While this form is not per se required in order to present a claim under the FTCA, it conveniently summarizes all of the information necessary to bring a claim. SF-95 is available for download here: <https://www.gsa.gov/forms-library/claim-damage-injury-or-death>.

As part of their FTCA Claim, a claimant must make a specific demand for monetary damages – this must also be included on the SF-95. Damages assessments can be challenging, particularly because the amount listed on the administrative claim generally acts as a cap on the amount of recovery. In calculating damages, it is helpful to conduct research into damages awards based on claims brought under similar sets of circumstances in the jurisdiction you will be filing the claim in. To learn more about calculating damages, refer to the resources provided above in Section II(A)(4).

In addition to a complete SF-95, potential claimants should submit a supplemental FTCA Administrative Claim Packet that lays out the factual and legal basis for the FTCA Claim being brought.

## **8. Filing an FTCA Claim *Pro Se***

You do not need to be represented by an attorney in order to file an FTCA Claim. A claimant may file a claim on her own behalf by completing the SF-95 and the supplemental FTCA Administrative Claim Packet. See **Appendix A** of this guide for a template claim for anyone filing *pro se*.

---

<sup>42</sup> 28 U.S.C. § 2675(a); 28 C.F.R. §§ 14.2(c), 14.9(b).

<sup>43</sup> 28 U.S.C. § 14.9(b).

## **B. Requesting a Stay of Removal from ICE**

If you have a final order of removal and do not wish to be deported, you can request a stay of removal. A stay can be requested for the duration of up to one year. Before that year expires, you can apply again for another stay of removal.

### **1. What is a Stay of Removal?**

A stay of removal is a discretionary determination by ICE not to deport someone for a specified, limited period of time. For example, ICE could choose to grant a stay for six months because someone is a plaintiff or witness in a civil rights case, has medical problems, or strong family ties. It is important to show that you are not a threat to public safety. A stay is generally granted for either six months or one year. You can request up to one year on the form when you apply. Anyone with a final order of removal can request a stay of removal.

### **2. What Documents Should be Submitted to Request a Stay?**

You can request a stay by submitting the following:

1. **Form I-246:** If you are having trouble with the signature boxes on the form, print it out and white out the lines in the boxes in order to sign. The form must be signed by the applicant.
2. **Fee of \$155:** Submit a money order or Cashier's check made out to the "U.S. Department of Homeland Security." Personal checks will not be accepted. Do not write any identifying information, such as a name or A-number, on the money order or Cashier's check.
3. **Identity documents**, including:
  - a. An original passport valid for at least 6 months past the time period requested;  
**or**
  - b. A copy of a passport valid for at least 6 months past the time period requested, and a copy of a birth certificate or another identity document.If you don't have a passport and one is needed to travel to your country, provide proof that you've applied for a passport or a similar travel document. If ICE has possession of your passport, you can note that on the form.
4. **Evidence of why you should be allowed to stay**, such as: medical records; birth certificates or IDs of family members, especially if they have legal status; evidence of any pending appeals, motions, or applications in your immigration case; tax returns, evidence of employment, or letters of support regarding your good moral character;
5. **Any criminal records** (these are required if applicable to you);
6. **A statement summarizing** why you want a stay of removal and why are not a threat to public safety.

### **3. How to Submit the Stay of Removal Application**

Generally, you must hand deliver the complete application, including the fee, to the ICE Enforcement and Removal Office overseeing your case. This policy may vary between offices and some offices may accept the stay application via courier. You should check with the ICE office that is handling your case. If you are checking in with ICE, the office where you file the stay would be the same office you visit for check-ins. Address the application to the Field Office Director or Assistant Field Office Director. If the ICE office overseeing your case is Atlanta, the address is Immigration and Customs Enforcement, Atlanta Field Office, 180 Ted Turner Dr. SW #522, Atlanta, GA 30303.

**Appendix B** contains a template that can be used to request a stay of removal based on medical abuse at ICDC.

## **C. Department of Homeland Security Civil Rights and Civil Liberties Complaints**

If you suffered medical abuses or other harms at the Irwin County Detention Center, and especially if you were a patient of Dr. Amin and believe examinations or procedures that he performed on you were invasive, unnecessary, and/or performed without your consent, then you may wish to file a DHS Civil Rights and Civil Liberties (CRCL) Complaint to give DHS the opportunity to investigate what happened to you and help make sure it does not happen again.

### **1. What is DHS CRCL?**

DHS Office for Civil Rights and Civil Liberties (CRCL) is dedicated to investigating potential violations of an individual's civil rights; civil liberties; profiling based on race, ethnicity, or religion; and/or abuses based on disability by DHS employees, officials, or their programs.<sup>44</sup> The CRCL does not provide legal remedies, but it does investigate allegations of abuse and other problems within DHS agencies.

### **2. Why File a CRCL Complaint?**

A CRCL Complaint gives DHS the opportunity to investigate what happened to you and potentially take action based on that investigation. In addition, while DHS is investigating your case, they have the power to put what is called a "Z hold" on your immigration status, which could protect you from deportation while your claim is being investigated.

### **3. What Kinds of Abuses or Harms "Count" For Filing a Complaint?**

A DHS CRCL Complaint can be based on a wide range of government abuses, but must allege a violation of your civil rights or liberties. For example, if guards retaliate against detainees for engaging in a peaceful protest, or speaking to members of Congress, regarding dangerous health conditions within a facility operated by (or contracted with) DHS, those detainees could file a CRCL Complaint alleging a violation of the First Amendment.

Additionally, pursuant to the Rehabilitation Act of 1973, the government is prohibited from discriminating against persons on the basis of physical or mental disabilities and must afford reasonable accommodations to ensure that persons with disabilities can fully and equally participate in a program, service, or benefit, including carceral programs like detention centers.<sup>45</sup> Thus, if you have a diagnosed physical disability (including temporary disabilities due to injury or surgery) or a diagnosed mental disability, and you believe that you suffered discrimination on

---

<sup>44</sup> 6 U.S.C. § 345; 42 U.S.C. § 2000ee-1, 29 U.S.C. § 794.

<sup>45</sup> 29 U.S.C. §§ 701, 794.

the basis of that disability, or that the detention center failed to provide reasonable accommodations to allow you full and equal access, then you should consider alleging a violation of the Rehabilitation Act in a CRCL Complaint. Examples of this might include: not receiving adequate follow up care after a significant surgery; not being given proper medications for a diagnosed mental disability or illness; or unnecessarily and knowingly being placed in situations that exacerbate your disability.

You are not limited in the number of harms you can assert in a CRCL Complaint, and you can address both civil/constitutional violations and Rehabilitation Act violations, if you think both are applicable.

#### **4. What Kind of Proof Should You Attach to Your Complaint?**

The strongest DHS CRCL Complaints will include evidence that corroborates the harms you allege. These may include, but are not limited to: your own sworn declaration; affidavits or declarations from witnesses; medical records; evaluations from doctors, therapists, or other medical professionals; photographs; or other official records of DHS. It is very helpful if you have evidence reflecting that DHS officials were aware, or should have been aware, of the harms you experienced. For example, if possible you should include evidence that shows DHS knew or should have known about an ICDC doctor or ICDC official's bad acts (for example, because they had received prior complaints). If you are alleging that you faced discrimination on account of one or more temporary or permanent disabilities, it will be helpful to include proof of these disabilities from either before or during the abuses/harms you suffered and any proof you have that DHS was aware (or should have been aware) of that disability. This usually takes the form of medical records but could be shown in other ways (for example, if the disability is obvious because it requires use of a wheelchair).

If possible, you should also include evidence of the mental, emotional, or physical *impact* of these harms. Evidence establishing the impact of the civil rights harms that you experienced in ICDC may include, but is not limited to: your own sworn declaration; affidavits or declarations from family members or others who know you; medical records; evaluations from doctors, therapists, or other medical professionals; or photographs. It is especially helpful if you can provide a statement from a medical expert that establishes that: 1) what happened to you was not medically necessary or appropriate; and/or 2) these abuses or harms had a significant impact on your health.<sup>46</sup>

---

<sup>46</sup> Some resources for pro bono evaluations include: Physicians for Human Rights, <https://www.tfaforms.com/4642108%20> and the University of Chicago Pro Bono Medical Assistance Pilot Program: [https://docs.google.com/forms/d/e/1FAIpQLSdO-Bo7X7C5FeKR\\_7c81qQtFTR9BieUY5reGxy2lhHKhrWtZw/viewform](https://docs.google.com/forms/d/e/1FAIpQLSdO-Bo7X7C5FeKR_7c81qQtFTR9BieUY5reGxy2lhHKhrWtZw/viewform).



## **5. How Should You Submit Your CRCL Complaint?**

The DHS CRCL website offers instructions on the submission of a complaint.<sup>47</sup> You can email your complaint to [CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov).

## **6. What to Expect After Filing?**

Once you file your complaint, it will be received by the CRCL Office. Someone from that office should send you a letter or email to let you know whether they are investigating your claims. If they are proceeding with an investigation, you will likely receive a case number that you can use for follow-up inquiries or refer to as needed in connection with other aspects of your immigration case.

If you have not received a response or case number within 4-6 weeks of filing your complaint, you should follow up on the status of your complaint and the investigation at the same email address you used to file your complaint. It may be helpful to include a copy of the complaint you filed and the prior email you sent, if possible.

If DHS informs you that they are not investigating one or more of your claims (for example, if they decide not to investigate your Rehabilitation Act claim), you can ask them to provide the rationale for that decision so that you can respond.

## **7. Template Instructions**

**Appendix C** provides a template CRCL administrative complaint to adapt to your own situation. Information bolded and in brackets should be filled in with your own information. For your reference, some information specific to ICDC and Dr. Amin is included in the template.

---

<sup>47</sup> Make a Civil Rights Complaint, Office for Civil Rights and Civil Liberties, available at <https://www.dhs.gov/file-civil-rights-complaint>.

## **D. U Nonimmigrant Visas**

### **1. U Visa Eligibility**

If you suffered substantial mental or physical abuse while detained at ICDC as a result of criminal activity and are helpful in the investigation or prosecution of that criminal activity, you may be eligible for U Nonimmigrant Status. U Nonimmigrant Status is often referred to as a U Visa. Unlike a stay of removal or a Z hold, a U Visa can provide a path to work authorization and, eventually, permanent residency and naturalization.

### **2. What is U Nonimmigrant Status?**

U Nonimmigrant Status is available for victims of certain crimes who have suffered mental or physical abuse and are or may be helpful to law enforcement or government officials in the investigation or prosecution of that criminal activity. If granted, U Nonimmigrant Status is valid for 4 years.<sup>48</sup>

Eligible individuals may petition for a U-1 Visa by submitting:

1. Form I-918.
2. Form I-918, Supplement B (a certification by an authorized official of the law enforcement agency attesting to the fact that they investigated a qualifying crime and that the victim was helpful to their investigation).
3. A personal statement describing the criminal activity of which you were a victim.
4. Evidence establishing each element of eligibility.
5. If inadmissible to the United States (such as, under a final order of removal), a Form I-192 waiver.

Unfortunately, USCIS is only authorized to issue 10,000 U Visas per year, and there is lengthy backlog. U Visa applicants should simultaneously apply for any other immigration relief possible and be prepared for years-long wait times.<sup>49</sup>

---

<sup>48</sup> The 4-year cap can be extended in limited circumstances with recertification from law enforcement, or automatically extended in an adjustment of status (getting a Green Card). There is no fee to file form I-918 Petition for U Nonimmigrant Status with USCIS. USCIS estimates waiting times to process the initial Form I-918 petition, which has to be filed first to begin the process of determining whether a person can be granted U Status, to be 58 to 58.5 months (4.8 years). See *Processing Time for Petition for U Nonimmigrant Status (I-918) at Vermont Service Center*, USCIS, <https://egov.uscis.gov/processing-times/> (last visited Feb. 12, 2021).

<sup>49</sup> U Visas are currently oversubscribed because there is a 10,000 per year cap on U Visas, so it takes an estimated 5 to 10 years for an individual who files today to receive a final decision. See USCIS, *U Visa Filing Trends: Analysis of Data Through FY 19*, at 3 (Apr. 2020), [https://www.uscis.gov/sites/default/files/document/reports/Mini\\_U\\_Report-Filing\\_Trends\\_508.pdf](https://www.uscis.gov/sites/default/files/document/reports/Mini_U_Report-Filing_Trends_508.pdf).

### 3. Eligibility for U Nonimmigrant Status

In order to be eligible, all of the following factors must be present:<sup>50</sup>

1. You are the *victim*<sup>51</sup> of a *qualifying criminal activity* (see below for list).
2. You have suffered *substantial physical or mental abuse*<sup>52</sup> as a result of having been a victim of criminal activity.
3. You have *credible and reliable*<sup>53</sup> information about the criminal activity.
4. You *were helpful, are helpful, or are likely to be helpful to law enforcement* in the investigation or prosecution of the crime.<sup>54</sup>
5. The crime occurred in the United States or violated U.S. laws.
6. You are *admissible* to the United States.

#### “Qualifying Criminal Activity” Is a Threshold Requirement

---

<sup>50</sup> 8 C.F.R. § 214.14(b). The burden is on the petitioner (the direct or indirect victim) to demonstrate that they are eligible. 8 C.F.R. § 214.14(c)(4).

<sup>51</sup> The “victim” is the person against whom the crime was perpetrated and who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14). Indirect victims (some family members of direct victims who have either died, or are minors) can count as well. 8 C.F.R. § 214.14(a)(14)(i). However, a petitioner who is guilty of the qualifying criminal activity being investigated or prosecuted is disqualified from being recognized as a victim of that crime. 8 C.F.R. § 214.14(a)(14)(iii).

<sup>52</sup> “Substantial physical or mental abuse” means “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). Whether or not a victim has suffered “substantial” abuse depends on many factors, and the I-918 Form requests documentation of injuries sustained (commonly from the police report of the criminal activity).

<sup>53</sup> “Credible and reliable information” means the victim must have specific facts about the criminal activity that aids law enforcement. 8 C.F.R. § 214.14(b)(2). U-1 Visa petitioners, and even those who are granted U Status, are subject to a continuing responsibility to assist, which means complying with all reasonable law enforcement requests for assistance with the investigation or prosecution of the crime both before and after applying. Status can be revoked if the victim stops complying with reasonable requests. 8 C.F.R. § 214.14(i).

<sup>54</sup> The law enforcement agency must “certify” that the victim was helpful to any investigation on Form I-918, Supplement B. 8 C.F.R. § 214.14(a)(2). The law enforcement agency with responsibility for the investigation or prosecution of a qualifying crime can decline to sign if the victim has not been helpful, or if the case will not require assistance from the victim. Even if the victim secures a certification from the law enforcement agency, moreover, USCIS may not consider the certification alone to be enough evidence that either (1) the criminal activity was a qualifying crime or (2) that the victim was helpful to law enforcement. 8 C.F.R. § 214.14(c)(4).

The threshold question for any U-1 Visa Petition is whether or not the crime qualifies. To be a “Qualifying Criminal Activity,” it must be listed in the Immigration and Nationality Act (INA) or be “*substantially similar*” to one of those crimes:<sup>55</sup>

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes (including “any similar activity” where the elements of the crime are substantially similar).

“Substantially similar” criminal activities are offenses where “the nature and elements” of the crime, as defined by the law in the state or locality where the criminal activity took place, are like one of the listed crimes.<sup>56</sup> Determining whether an offense is “substantially similar” requires comparing the definition of the listed crime to the definition of the crime actually detected, investigated, or charged by law enforcement.

#### **4. Requesting Certification for U Nonimmigrant Status Based on Abuse at ICDC**

As mentioned above, a Form I-918, Supplement B is necessary before you can apply for U Nonimmigrant Status. This is a certification by an authorized official of a law enforcement agency attesting to the fact that they investigated a qualifying crime and that the victim was helpful to their investigation. This certification is commonly referred to as a “U Visa certification.” Note that obtaining the certification is a necessary step towards applying for a U Visa, but there are other important requirements for applying for a U Visa. If you can get the law enforcement certification, you should contact a nonprofit organization or reputable immigration attorney for a consultation regarding how to satisfy the remaining requirements. Note also that U Visa law enforcement certifications expire within six months.

---

<sup>55</sup> 8 U.S.C. § 1101(a)(15)(U)(iii).

<sup>56</sup> 8 C.F.R. § 214.14(a)(9). The definitions of crimes to be compared against the list will most often come from state law. If you are a victim of federal crimes, the definition of the crime to be compared against the list would come from federal law.

In March 2021, about three dozen survivors of medical abuse at ICDC requested U Visa certifications from federal officials. As of April 2021, the survivors have not yet received U Visa certifications from federal officials based on the abuse they suffered while detained at ICDC. **Appendix D** provides a template that can be adapted and used to request U Visa certifications based on medical abuse at ICDC.

**PART III: APPENDICES**

**Appendix A: FTCA Admin Complaint Template**

**VIA CERTIFIED MAIL AND E-MAIL**

Office of the General Counsel (ogc@hq.dhs.gov)  
U.S. Department of Homeland Security  
Washington, DC 20528

Office of the Principal Legal Advisor (original)  
Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
500 12th Street SW  
Washington, DC 20024

U.S. Custom and Border Protection  
Office of the Chief Counsel  
1300 Pennsylvania Avenue NW  
Washington, DC 20229

U.S. Department of Health and Human Services  
Office of the General Counsel  
200 Independence Avenue SW  
Washington, DC 20201

Thomas P. Giles  
Acting Director of Atlanta ICE Field Office  
U.S. Immigration and Customs Enforcement Atlanta Field  
Office 180 Ted Turner Dr. SW, Suite 522  
Atlanta, GA, 30303

[Date]

**Re: Notice of Claim for Damages under the Federal Tort Claims Act – [Your Full  
Name]**

Dear Sir or Madam:

Enclosed please find an administrative claim under the Federal Tort Claims Act (“FTCA”) against the United States government for the extreme suffering, severe pain and distress, and other harms inflicted on me as a result of the unnecessary gynecological procedures [And, if applicable, any other harm you suffered at Irwin County Detention Center] performed on me while in the custody of United States Immigration and Customs Enforcement (“ICE”) at Irwin County Detention Center (“ICDC”).

I am seeking an award of damages to compensate me for the harms I sustained in connection with the events related to the unnecessary gynecological procedures.

*[Optional]*: Some claimants may have had an expert review their medical records, but having an expert review your records is not required to file an FTCA Claim. If an expert has reviewed your records, you can include the following two paragraphs]

[Expert’s Name] has reviewed medical records related to my gynecological treatment while I was in ICE custody, and has provided an expert affidavit establishing a widespread pattern of overly aggressive care and diagnostic methods, among other claims.

[If applicable, add paragraph describing the specific findings of the reviewing medical expert] ICE, ICE employees, ICE contractors, and other individuals and entities knew or should have known that Dr. Amin had a pattern of performing unnecessary gynecological procedures and that the procedures performed on me were unnecessary, not consented to, and would result in significant harm to me.

*[Optional]*: Include any additional claims here, briefly describing the details of what happened and include a paragraph similar to the above paragraph indicating federal employee culpability. For example, if you suffered other harm from dental procedures, include the details of that experience and how ICE employees knew or should have known the dentist would cause you harm]

The information in the following claim is based on personal medical files and other similar files of the Claimant. Pursuant to section 552(b)(6) of the Freedom of Information Act (“FOIA”) and any other applicable statute or regulation protecting the privacy of FTCA Claimants, the contents of this submission are confidential and exempt from disclosure. If any FOIA request is made related to the enclosed claims, I ask that the government (1) notify me before responding; (2) confirm that it will not disclose the confidential information contained in this submission; and (3) redact any and all confidential information contained in the submission.

Sincerely,

[Your Signature]

[Your Printed Name and Contact Information]

Enclosures (FTCA Standard Form 95 Complaint, Claim Authorization Form, Attachment)



**TEMPLATE: FTCA ADMINISTRATIVE CLAIM ALLEGING ABUSE AT IRWIN, SAMPLE SF-95 RESPONSES**

Note the answer numbers in this sample correspond to question numbers on the SF-95 form. This form should be completed in its entirety.

**FTCA Standard Form 95 - Attachment**

Claimant: [Your Name]

**6. Date and Day of Accident/Incident**

[Time frame during which the incident(s) occurred. (Example: March 2020 - July 2020)]

**7. Time (A.M. or P.M.)**

[Time at which the incidents you experienced occurred. If multiple incidents occurred or occurred at various times, put “Various.”]

**8. Basis of Claim**

**Factual Basis of FTCA Claim**

I am a [your age] year old woman from [your home country]. I was detained at the Irwin County Detention Center (“ICDC”) from [date you were first detained at ICDC] to [date you were released from ICDC].

As described in detail below, during my time in detention, I was subjected to non-consensual, medically unnecessary, invasive gynecological procedures at the hands of ICE officers and agents. Specifically, ICE and ICDC officials and officers authorized Dr. Mahendra Amin, an Obstetrics & Gynecology Specialist affiliated with the Irwin County Hospital, to perform these non-consensual and medically unnecessary procedures on individuals in ICE custody at ICDC, including myself. [Optional: If you were subjected to any other medically unnecessary and/or nonconsensual procedures (for example, nonconsensual dental procedures), include a brief summary of those procedures here]. ICDC is a detention facility located in Ocilla, Georgia, which contracted with the federal government to detain individuals pursuant to federal immigration laws. ICE officers and employees are physically present in the ICDC facility, overseeing ICDC officers and employees. In fact, ICE is stationed in the facility in order to ensure adherence with Performance Based National Detention Standards, which apply to both federal and private detention facilities. As such, ICE is liable for the actions of ICDC officers and employees.

## **A. Dr. Amin Abused Detained Women.**

### **1. Dr. Amin Subjected Me to Non-Consensual, Medically Unnecessary, Invasive Gynecological Procedures.**

[Describe in detail your interactions with Dr. Amin and any medically unnecessary and/or nonconsensual procedures he performed on you.]

### **2. Medical Experts Concluded That the Procedures Dr. Amin Performed on Me Were Medically Unnecessary.**

Between September and October 2020, a team of nine board certified gynecologists and two advanced practice nurses viewed the medical records of nineteen women alleging medical abuse while they were detained at Irwin County Detention Center. Their review culminated in a report detailing “a disturbing pattern of overly aggressive care, sometimes involving unnecessary diagnostic procedures and, in some cases, unnecessary surgical procedures.” In particular, the report found that “significant steps in the appropriate evaluation and management of common gynecologic conditions” were frequently omitted, and that many, if not all, of these procedures were performed “without adequate informed consent, and without documentation of any discussion of less invasive options that might be appropriate for the patient.”

*[Optional:* Some claimants may have had an expert review their medical records, but having an expert review your records is not required to file an FTCA Claim. If an expert has reviewed your records, you can include the following two paragraphs]

[Medical Expert Name] has reviewed my medical records and provided a sworn declaration with [Medical Expert’s Pronouns] observations and conclusions about my treatment with Dr. Amin. [Describe in detail the conclusions of the medical expert here].

[If multiple experts have reviewed your medical records, repeat the above paragraph with the additional expert’s name and conclusions].

### **3. The Non-Consensual Procedures Caused Me Emotional and Psychological Distress**

*[Optional:* If you have recently undergone a psychological or mental health evaluation, include the details of your evaluation here, including the name and qualifications of the doctor or psychologist and any psychological diagnoses you received].

Enduring the procedures at the hands of Dr. Amin left me feeling [Describe the emotions and feelings you experienced when you suffered through your gynecological procedures. Explain how these incidents have affected you emotionally.]

[*Optional*: If you were subjected to any other medically unnecessary or nonconsensual procedures while detained at Irwin, add a heading here with paragraphs describing those other harms you suffered in a manner similar to the description of gynecological harms above. For example, if you underwent a nonconsensual dental surgery at Irwin, you could include that here.]

## **B. ICE and Its Employees and Agents Knew of Similar Medical Abuse Complaints and Failed to Remedy Them, But Instead Let the Abuse Continue.**

Since at least 2018, women treated by Dr. Amin and their counsel have reported his abusive behavior to ICE, ICDC, and their agents, both verbally and in writing.<sup>57</sup> Employees of ICE Health Services, i.e., federal government employees, made the medical requests, which transferred detained women to the Irwin County Hospital for treatment with Dr. Amin.

Multiple women detained at ICDC complained verbally or in writing about the painful, unnecessary, non-indicated, and/or non-consensual medical procedures Dr. Amin performed on them. In fact, there is evidence that women made complaints to nurses and psychiatrists, such as Dr. Faulk, about the abuse they suffered at the hands of Dr. Amin. Those nurses and psychiatrists are ICE employees. Despite these complaints, ICE continued to regularly send women detained at ICDC to be treated by Dr. Amin. ICE and/or ICDC officers accompanied women detained at ICDC to their appointments with Dr. Amin. ICE and/or ICDC officers remained in the room as Dr. Amin performed painful non-consensual procedures on them. ICE and/or ICDC officers witnessed the women crying out in pain and asking Dr. Amin to stop, which he generally refused to do. ICE and/or ICDC officers witnessed that Dr. Amin did not obtain consent for many of the procedures. ICE and/or ICDC officers also witnessed that he frequently did not make any attempts or respond to requests to provide interpretation or to speak to each woman in a language she could understand.

ICE and/or ICDC also knew and/or recklessly disregarded the fact that from 2013 to 2015, the Department of Justice (“DOJ”) investigated and sued Dr. Amin for similar behavior—performing unnecessary medical procedures in violation of the False Claims Act—as part of the lawsuit *United States v. Hospital Authority of Irwin County*, No. 7:13-cv-00097-HL (M.D.

---

<sup>57</sup> Many women came forward detailing similar patterns of medical abuse they endured at the hands of Dr. Amin including: Yanira Yesenia Oldaker, Tatyana Alekseyevna Solodkova, Luz Adriana Walker, Lourdes Terrazas Silas, Jaromy Jazmín Floriano Navarro, Keynin Jackelin Reyes Ramirez, and Ana Gabriela Adan Cajigal. This list is not exhaustive, as many other women who reported Dr. Amin’s abusive behavior preferred to come forward without being named.

Ga.).<sup>58</sup> In *United States v. Hospital Authority of Irwin County*, the DOJ alleged that “Dr. Amin has a standing order at ICH [Irwin County Hospital] which requires that certain tests always be run on pregnant patients, without any medical evaluation and regardless of her condition . . . Dr. Amin’s standing order for ultrasounds on his patients constitutes a pattern of medical services that he, ICH, and on-call doctors know or should know are not medically necessary.”<sup>59</sup> In putting such a “standing order” in place, Dr. Amin performed medically unnecessary procedures on detained women, failed to account for the specific needs of each patient, and ignored the fact that no two patients’ needs are identical. Despite this knowledge, ICE and its employees and agents disregarded and/or acted with extreme indifference of the risk of harm to patients and continued to send women detained at ICDC to Dr. Amin for treatment.

Finally, ICE and/or ICDC also knew or should have known that these invasive, medically unnecessary procedures were in fact medically unnecessary by the sheer number of procedures ordered by Dr. Amin. ICE was responsible for reviewing and paying for such procedures and it is medically improbable that such a drastic number of women detained in the same facility would have the same or similar diagnoses, which all required invasive procedures.

**1. A Whistleblower Has Substantiated That Dr. Amin Was Abusing Detained Women, Performing Unconsented to and Medically Unnecessary Medical Procedures on ICDC Detainees.**

On September 14, 2020, Ms. Dawn Wooten submitted a whistleblower complaint detailing facts establishing that Dr. Amin was performing medically unnecessary procedures on women detained at ICDC.<sup>60</sup> Ms. Wooten’s whistleblower complaint described a general failure to obtain consent for medical procedures and a pattern of performing medically unindicated procedures.<sup>61</sup>

This whistleblower complaint corroborates the non-consensual and medically unnecessary procedures that Dr. Amin was performing on me and other women detained at ICDC. Yet, even after the whistleblower complaint was filed and widely publicized, ICE and its

---

<sup>58</sup> Press Release, Department of Justice, U.S. Attorney’s Office, Middle District of Georgia, Hospital Authority of Irwin County Resolves False Claims Act Investigation for \$520,000 (Apr. 29, 2015), <https://www.justice.gov/usao-mdga/pr/hospital-authority-irwin-county-resolves-false-claims-act-investigation-520000>.

<sup>59</sup> Complaint at 15, 17, *United States v. Hospital Authority of Irwin County*, No. 7:13-cv-00097 (M.D. Ga. July 8, 2013).

<sup>60</sup> See Whistleblower Report: 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, <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>.

<sup>61</sup> See *id.*

employees and agents continued to send women detained at ICDC to Dr. Amin for treatment. ICE disregarded and/or acted with extreme indifference to the serious risk of harm to the women detained at ICDC as they continued to take women to be treated by, and subjected to abuse by, Dr. Amin.

## **2. Congress Investigated the Report That Dr. Amin Abused Detained Women, Including Obtaining Independent Medical Reviews of Their Records.**

On September 15, 2020, Senator Cory Booker called on DHS to immediately investigate the allegations of non-consensual and medically unnecessary procedures performed by Dr. Amin on ICDC detainees contained in Ms. Wooten’s complaint.<sup>62</sup> Federal agencies, including DOJ, DHS Office of the Inspector General, and the FBI, opened investigations into the allegations of medical abuse at ICDC. On September 26, 2020, a congressional delegation visited ICDC to investigate the allegations and experiences of the women detained.<sup>63</sup>

Then, in October 2020, as part of Congress’s investigation, a team of independent medical professionals reviewed over 3,200 pages of medical records of nineteen different women detained at ICDC who alleged medical abuse at the hands of ICDC and Dr. Amin.<sup>64</sup> The reports were provided to Congress. The report by the medical team described an “alarming pattern” of medical abuse, including but not limited to description of widespread practices that corroborated

---

<sup>62</sup> Letter from Senator Booker to Inspector General Cuffari (Sept. 15, 2020), [https://www.booker.senate.gov/imo/media/doc/9.15.20%20Letter%20to%20DHS%20OIG%20re%20GA%20Whistleblower%20Complaint%20FINAL%20SIGNED%20\(002\).pdf](https://www.booker.senate.gov/imo/media/doc/9.15.20%20Letter%20to%20DHS%20OIG%20re%20GA%20Whistleblower%20Complaint%20FINAL%20SIGNED%20(002).pdf).

<sup>63</sup> Congressional Hispanic Caucus Statement on Investigation of Irwin County Detention Center, <https://chc.house.gov/media-center/press-releases/congressional-hispanic-caucus-statement-on-investigation-of-irwin-county>.

<sup>64</sup> Molly O’Toole, *19 women allege medical abuse in Georgia immigration detention*, L.A. Times, Oct. 22, 2020, <https://www.latimes.com/politics/story/2020-10-22/women-allege-medical-abuse-georgia-immigrationdetention>; Greg Walters, Carter Sherman, Neda Toloui-Semnani, ‘*A Disturbing Pattern*’: ICE Detainees Were Pressured to Have Gynecological Surgery, Doctors Say, VICE (Oct. 24, 2020), <https://www.vice.com/en/article/88a95x/ice-detainees-were-pressured-to-have-gynecological-surgery-doctors-say>.

that Dr. Amin had performed non-consensual and medically unnecessary gynecological procedures and surgeries on detainees at ICDC.<sup>65</sup>

### **C. ICE Is Responsible for The Medical Abuse Inflicted on Me.**

ICE is responsible for the conditions at ICDC. As previously explained, ICDC is in a contract with the federal government to detain individuals pursuant to federal immigration laws. Under ICE's watch, many women, including me, suffered from medically unnecessary, invasive procedures, endangering many lives for no reason. Such unnecessary, invasive procedures caused mental pain, anguish, and suffering. ICE and its agents or employees knew of similar complaints but failed to take measures to remedy the problems. Moreover, ICE and its agents or employees disregarded and/or acted with extreme indifference to the serious risk of harm to the detained women, including me.

### **Legal Basis of FTCA Claim**

#### **A. Negligence, Gross Negligence, and Recklessness**

ICE had a duty to maintain safe and sanitary conditions at ICDC. ICE also had a duty to ensure that those detained at ICDC, received adequate medical care that adhered to standards of gynecological medical care. ICE breached its duties by failing to ensure safe, sanitary, humane conditions at ICDC; by failing to ensure adequate and appropriate medical care, despite adequate notice of ongoing unconsented to and unnecessary gynecological surgeries at ICDC; and by failing to address repeated reports of inadequate medical care. ICE knew or should have known the risk when it took women to be treated by Dr. Amin.

As a direct and proximate result of ICE's negligent, grossly negligent, and reckless acts, omissions, and conduct, I was subjected to non-consensual, medically unnecessary, invasive gynecological procedures. ICE's negligence, gross negligence, and recklessness caused me to suffer extreme and extended physical, mental, and emotional pain and distress and future medical expenses.

---

<sup>65</sup> Molly O'Toole, *19 women allege medical abuse in Georgia immigration detention*, L.A. Times (Oct. 22, 2020), <https://www.latimes.com/politics/story/2020-10-22/women-allege-medical-abuse-georgia-immigration-detention>; Greg Walters, Carter Sherman, Neda Toloui-Semnani, *'A Disturbing Pattern': ICE Detainees Were Pressured to Have Gynecological Surgery, Doctors Say*, VICE (Oct. 24, 2020), <https://www.vice.com/en/article/88a95x/ice-detainees-were-pressured-to-have-gynecological-surgery-doctors-say.2>. A week later, the Inter-American Commission on Human Rights expressed its concern over the non-consensual surgeries and sterilizations at ICDC, citing the whistleblower complaint and the medical report. Press Release, *IACHR Expresses Its Concern Over Reports of Sterilizations and Surgical Interventions Without Consent in Migrant Detention Centers in the United States* (Oct. 30, 2020). The IACHR emphasized the serious violations of reproductive and sexual rights at ICDC along with the overall negligent medical care, the lack of protective measures during the COVID-19 pandemic, the lack of interpretation and language barriers to accessing medical care, as well as discriminatory treatment and intimidation of immigrants at ICDC. *Id.*

## **B. Medical Negligence**

ICE had a duty to ensure that those detained at ICDC received adequate medical care that adhered to standards of gynecological medical care. As a direct and proximate result of the inadequate, substandard medical care and supervision provided by physicians and other health care providers employed by and/or agents of ICE, I was forced to endure nonconsensual, unnecessary, and invasive gynecological procedures and suffered extreme physical, mental, and emotional pain and distress.

## **C. Negligence Per Se**

ICE had a duty to ensure that those detained at ICDC received adequate medical care and supervision that adhered to standards of gynecological medical care. ICE breached its duties by allowing a previously disciplined doctor with numerous complaints against him, including for performing unnecessary gynecological surgeries for profit, to perform multiple unnecessary gynecological procedures against me without my consent. As a direct and proximate result, I suffered extreme and extended physical, mental, and emotional pain and distress as well as future medical expenses.

## **D. Negligent Supervision**

ICE had a duty to prevent its employees or agents from causing physical harm to a third party. ICE breached its duty by failing to ensure safe, sanitary, and humane conditions at ICDC, including by failing to carry out adequate management oversight of the provision of medical care at the detention facility.

As a direct and proximate result of ICE's acts, omissions, and conduct, I was forced to endure non-consensual and unnecessary gynecological procedures. ICE's negligence and gross negligence caused me to suffer extreme physical, mental, and emotional pain and distress.

## **E. Medical Battery**

ICE is responsible for medical procedures that were conducted without consent, which resulted in severe harm to me.

## **F. Intentional Infliction of Emotional Distress**

ICE is responsible for intentional or reckless conduct that was extremely outrageous and caused severe emotional distress to me.

## **G. Intentional Infliction of Emotional Distress**

ICE is responsible for conduct that caused me physical injury, and the injury caused me mental suffering or emotional distress.

#### **H. Other Causes of Action**

This is not intended to be an exhaustive list of possible causes of action, including attorneys' fees, *Bivens* claims, violations of 42 U.S.C. §§ 1983 and 1985, and breach of contract, which I reserve the right to assert in an appropriate forum at an appropriate time, to the extent not already asserted.

#### **11. Witnesses**

Possible witnesses include the following: [List witnesses, including yourself and the names of doctors who reviewed your medical records and/or provided psychological evaluations]

This is not intended to be an exhaustive list of possible witnesses, many of whom are unknown at this time.

#### **13B. Phone Number of Person Signing Form**

[Your Name]

[Your Phone Number]

[Your Email Address, if any]



## Appendix B: Stay of Removal Template

[DATE]

[ADDRESS TO ICE ERO OFFICE OVERSEEING THE CASE]

Re: [INSERT NAME, A-NUMBER]  
Request for Stay of Removal

Dear Officer:

Our office represents [NAME] regarding this request for a stay of removal pursuant to 8 C.F.R. § 241.6. [NAME] is a [AGE]-year-old citizen of [COUNTRY]. She has a final order of removal dated [DATE]. As explained more fully below, [NAME] qualifies for a stay of removal as a victim of criminal and tortious activity, and as a plaintiff and witness in a civil rights case. Additionally, [NAME] has serious physical and mental health conditions, strong family and community ties to the United States, a pending request for U Visa certification, and does not present a public threat.

Enclosed with this request are:

1. Form G-28
2. Form I-246
3. Fee of \$155
4. Copy of passport valid for at least six months past the time period requested [OR **PROOF THAT YOU APPLIED FOR PASSPORT OR ANOTHER VALID IDENTITY DOCUMENT**]
5. Copy of birth certificate with certified English translation [OR **OTHER IDENTITY DOCUMENT**]
6. Request for U Visa Certification
7. Evidence of cooperation with federal investigators
8. Declaration submitted in *Oldaker* lawsuit [*this may be helpful but is not required*]
9. Copy of complaint submitted to DHS Office for Civil Rights and Civil Liberties [*this may be helpful but is not required*]
10. Copy of complaint under the Federal Tort Claims Act [*this may be helpful but is not required*]
11. Receipt notices for any pending applications and waivers [e.g. **T Visa, VAWA, inadmissibility waiver, etc.**]

12. Medical records/evaluation showing [brief description of relevant health condition]
13. Mental health records/evaluation showing [brief description of relevant mental health condition]
14. Evidence of family and community ties [e.g. marriage certificate, children's birth certificates]
15. Evidence of employment [e.g. paystubs, letter from employer]
16. Tax returns [or other evidence of good moral character, e.g. letters of support]
17. Police reports and court dispositions for any prior arrests

1. **[NAME] Qualifies for a Stay of Removal as a Victim, and as a Plaintiff and Witness in a Civil Rights Case.**

The June 17, 2011, Memorandum from John Morton to all ICE Field Office Directors titled, *Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs*, which is still in effect, provides that ICE “should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the *willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.*” (Emphasis added).

The Memorandum further states that “[t]o avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to *exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints.*” (Emphasis added).

The Memorandum provides that particular attention should be paid to: (1) “victims of . . . serious crimes”; (2) “witnesses involved in pending criminal investigations or prosecutions”; (3) “plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations”; and (4) “individuals engaging in a protected activity related to civil or other rights.” Each of these four categories is applicable here.

First, [NAME] is a victim of criminal offenses involving violations of federal, state, and local law during her detention in federal custody at the Irwin County Detention Center (ICDC) in Ocilla, Georgia. Specifically, she is a victim of abusive sexual contact, sexual exploitation, sexual assault, felonious assault, female genital mutilation, and/or similar crimes at the hands of Dr. Mahendra Amin. [NAME] has submitted a request to federal authorities for U Visa certification based on this serious criminal activity. See **Exh. 6** (*U Visa Certification Request*).

Second, [NAME] is a witness in a federal investigation, as she has provided sworn testimony during interviews with investigators from the Department of Justice, Department of Homeland Security Office of the Inspector General, and the Federal Bureau of Investigations.

See **Exh. 7** (*Emails, Declaration, OR other evidence*) [INCLUDE IF RELEVANT]. The pending U Visa certification request also makes her a witness in a potential criminal investigation.

Some of the women victimized by Dr. Amin have since been released or deported with no known way to contact them, making witness testimony the only source of information about their medical abuse and related suffering. Moreover, bearing witness to pervasive criminal activity perpetrated against others, particularly in a captive environment, is itself a source of significant harm and trauma.

Third, [NAME] is a [PLAINTIFF AND/OR WITNESS] in a civil rights lawsuit related to these horrific abuses by Dr. Amin and retaliation against the women who spoke out about them. Specifically, she is a [PLAINTIFF AND/OR WITNESS] in the U.S. District Court lawsuit, *Oldaker v. Giles*, No. 7:20-cv-00224-WLS-MSH (M.D. Ga.). She has provided sworn testimony to the federal court about her experiences as a victim of criminal activity. **Exh. 8** (*Declaration Submitted in Oldaker Case*).

The *Oldaker* case is a non-frivolous lawsuit raising substantial civil rights claims under Sections 1983 and 1985 of the Civil Rights Act (42 U.S.C. §§ 1983, 1985), as well as under *Bivens*. Additionally, the case raises serious constitutional claims under the First Amendment based on retaliation and under the Due Process Clause of the Fifth Amendment based on punitive conditions of confinement, deliberate indifference to a substantial risk of serious harm, and deportation of essential witnesses. The case also alleges violations of the Rehabilitation Act, which prohibits discrimination against individuals with disabilities, and state tort laws, among other causes of action.

Fourth, [NAME] is engaged in protected activity related to civil and other rights. She has submitted a complaint to the DHS Office of Civil Rights and Civil Liberties regarding the abuses committed by Dr. Amin and retaliation against women who spoke out. **Exh. 9** (*CRCL Complaint*). [NAME], along with other plaintiffs and witnesses in the *Oldaker* lawsuit, have also filed complaints under the Federal Tort Claims Act based on the tortious acts committed by Dr. Amin, including medical battery, medical negligence, medical malpractice, and intentional infliction of emotional distress. **Exh. 10** (*FTCA Claim*).

## 2. [NAME]'s Medical and Mental Health Conditions Weigh Heavily in Favor of Granting a Stay.

[DESCRIBE ANY CURRENT MEDICAL AND MENTAL HEALTH ISSUES –PROVIDE DIAGNOSES FROM ANY EXPERT EVALUATIONS AND QUOTE FROM THEM]. See **Exh.12** (*Medical records*); **Exh. 13** (*Mental health evaluation*).

**3. [NAME] Has Strong Family and Community Ties in the United States, and Her Family Members Would Suffer Extreme Hardship if She Were Removed.**

[NAME] has lived in the United States since [INSERT DATE]. She has significant family ties, including [DESCRIBE SPECIFIC FAMILY RELATIONSHIPS]. See **Exh. 14** (*Birth certificate for children*). She was previously employed and helped support her family. See **Exh. 15** (*Paystub or other evidence of employment*). She paid taxes during the years 2010-2020. See **Exh. 16** (*Tax returns*).

If [NAME] were removed, her children would lose their mother and become destitute. They would likely end up in foster care. [DESCRIBE IMPACT OF REMOVAL ON FAMILY]. It would not be possible for [NAME] to take her children with her to [COUNTRY], as this would be detrimental to the children’s success in school and their other relationships. [IF FAMILY MEMBERS HAVE ANY HEALTH ISSUES, DISCUSS THEM TO SHOW HARDSHIP].

**4. [NAME] Does Not Fall Under the Enforcement Priorities.**

On February 18, 2021, Tae Johnson, Acting Director of ICE, issued a Memorandum titled *Interim Guidance: Civil Immigration Enforcement and Removal Priorities* that was effective immediately and covers enforcement actions including the execution of final orders of removal. That Memorandum includes three enforcement priorities: (1) national security, which includes individuals involved in terrorism-related or espionage-related activities; (2) border security, which includes individuals who entered unlawfully *after* November 1, 2020; and (3) public safety, which requires analyzing whether an individual who has been convicted of an aggravated felony under INA § 101(a)(43), or who has actively participated in gangs or organized criminal organizations, presents a threat to public safety.

[NAME] does not fall under any of these enforcement priorities. She has never been suspected or accused of posing a threat to national security. She entered the United States on [DATE]. She does not pose a threat to public safety. She has never actively participated in a gang. And she has not been convicted of an aggravated felony. See **Exh. 17** (*Criminal records*).

When evaluating whether a noncitizen “pose[s] a threat to public safety,” ICE must consider both “the extensiveness, seriousness, and recency of the criminal activity” and the following mitigating factors:

- “personal and family circumstances”;
- “health and medical factors”;

- “ties to the community”;
- “evidence of rehabilitation”;
- “whether the individual has potential immigration relief available.”

Where, as here, a noncitizen is “known to be suffering from serious physical or mental illness” and has “pending applications for immigration relief and [is] prima facie eligible for such relief,” the execution of a removal order must be grounded in “a compelling reason” with “approval from the FOD.” Execution of [NAME]’s removal order would not serve any compelling reason and must not be executed.

**[IF A CONVICTION COULD POTENTIALLY BE CONSIDERED AN AGGRAVATED FELONY, ARGUE WHY IT ISN’T ONE. IF A CONVICTION IS AN AGGRAVATED FELONY, ARGUE WHY IT’S NEVERTHELESS NOT A PUBLIC SAFETY RISK Consider consulting a practice guide to aggravated felonies, such as this guide available through the Immigrant Legal Resource Center: <https://www.ilrc.org/practice-advisory-aggravated-felonies>].**

## **5. The Positive Factors Outweigh Any Adverse Factors.**

There are no serious adverse factors in this case. [NAME] is not a threat to public safety, does not have a serious criminal history, has not engaged in significant immigration fraud, and is not a human rights violator. According to the Memorandum, “*In the absence of these or other serious adverse factors, exercising favorable discretion, such as release from detention and deferral or a stay of removal generally, will be appropriate.*” *Id.* (emphasis added).

**[ADDRESS ANY CRIMINAL HISTORY AND ARGUE THAT IT IS NOT SERIOUS AND/OR THAT, EVEN IF IT IS SERIOUS, THE REASONS FOR GRANTING A STAY OUTWEIGH ANY ADVERSE FACTORS. POSSIBLE POINTS TO MENTION INCLUDE EVIDENCE OF REHABILITATION, LENGTH OF TIME SINCE CONVICTION OCCURRED, LENGTH OF SENTENCE, WHETHER ANY THREAT CAN BE ADDRESSED THROUGH OTHER MEANS; REITERATE NOT AN ENFORCEMENT PRIORITY]**

*See Exh. 17 (Criminal records).*

## **Conclusion**

The facts of this case, as supported by the enclosed evidence, clearly demonstrate that [NAME] qualifies for a stay of removal as a victim, plaintiff and witness. [NAME]’s medical and mental health condition provides further support for granting a stay of removal. Any adverse

factors in this case are unequivocally outweighed by these positive equities, as well as by the hardship that [NAME]'s family would suffer if she were deported, [NAME]'s efforts to comply with U.S. immigration laws, including her effort to rectify her immigration status by seeking U Visa certification, and the extremely difficult socio-economic conditions in [COUNTRY].

If you require any additional information or documentation, please contact me at [PHONE NUMBER] or by email at [EMAIL ADDRESS].

Sincerely,

[ADD SIGNATURE BLOCK]

## Appendix C: DHS CRCL Complaint Template

[INSERT DATE]

Via email

U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties  
[CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov)

**RE: Complaint for Violations of Civil, Constitutional, and Disability Rights of [NAME]  
(A# XXX-XXX-XXX)**

Dear Officers:

I submit this complaint to seek redress for violations of my civil rights while in the custody of ICE and its detention subcontractors.

**[Begin your complaint with a short description of who you are, your immigration status information, how long you were/have been detained, and information about your family.]**

**[Then give a general overview of the various violations you plan to allege. Keep this part focused on a short summary of the facts, and, if possible, use language from the medical records that you intend to submit to show the abuses were egregious.]**

**[If you were denied medical care or faced medical abuse then complete this paragraph]** I was denied appropriate medical and mental healthcare during my more than **[length of confinement]** confinement at the Irwin County Detention Center (ICDC) in Ocilla, Georgia.<sup>66</sup> On **[DATE]**, for example, **[provide an example of denial of healthcare. At the end of this paragraph, briefly describe how this treatment has affected you physically or mentally]**.

**[If you are a survivor of Dr. Amin's medical abuse then adapt / complete this paragraph for your own situation]** A particularly egregious instance of medical abuse that I experienced concerns the facility contracted OBGYN provider, Dr. Mahendra Amin, whose activities at ICDC have been the subject of widespread media reporting. Dr. Amin subjected me to a non-consensual, medically unindicated, and invasive **[name the medical procedure]**. Dr. Amin's notes lacked any medical indication that **[this procedure]** was warranted for me and do not include any documentation of informed consent to the procedure. The available evidence establishes that his conduct in my case (and many others) fell below a reasonable standard of

---

<sup>66</sup> **[Cite to records showing denial of healthcare]**

medical care.<sup>67</sup> Indeed, an independent medical review conducted by a team of nine board-certified OBGYNs found Dr. Amin’s conduct at ICDC showed a pattern of abuse, including unnecessary and overly aggressive procedures, as well as a lack of adequate informed consent in every case reviewed by the team of experts. **[If you have a history of trauma, or prior relevant medical conditions, then highlight how Dr. Amin’s actions may have affected your trauma or prior conditions]**.

Nor are the violations of my rights while in detention limited to health issues. **[Include here an overview of any claims/evidence you have of civil rights violations, such as retaliation for trying to speak out about health or other abuses, which would violate the First Amendment]**. This kind of retaliation threatens to undermine the federal investigation and violates the U.S. Constitution, disability law, ICE policy, and rule of law norms.

My confinement violated ICE’s own standards, my constitutional rights, and laws prohibiting discrimination on the basis of a disability. I request that the U.S. Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) conduct a thorough investigation into the **[abuses]** at ICDC in order to ensure that no one else is subjected to the kind of harms that I suffered while in custody. Furthermore, I request a formal administrative hold on my deportation pending CRCL’s investigation as well as resolution of all ongoing court cases related to my detention or removal, as well as other relief.

**[Only include the following template sections that you believe are applicable to your particular situation. For example, if you are not alleging discrimination on the basis of a physical disability, you should delete that section]**

## **I. Rehabilitation Act Violations**

Federal law, as well as ICE’s National Detention Standards, prohibit discrimination on the basis of disabilities. People with a disability must have “equal opportunity to participate in, access, and enjoy the benefits of the facility’s programs, services, and activities.”<sup>68</sup> Section 504 of the Rehabilitation Act prohibits disability discrimination by any program or activity conducted by an executive agency, including ICE. ICE has adopted binding regulations to ensure that Section 504 is implemented within the agency.<sup>69</sup>

As a person with mental health and physical disabilities, I am a qualified person pursuant to Section 504 of the Rehabilitation Act and DHS/ICE regulations governing non-discriminatory

---

<sup>67</sup> **[Outside expert declarations can help here]**

<sup>68</sup> 2011 Performance-Based National Detention Standards (PBNDS) 4.8 at 345; *see also* 28 C.F.R. § 35.152(b)(2).

<sup>69</sup> *See generally* 6 C.F.R. § 15.



treatment of people with disabilities. **[List, and cite to proof, of your qualifying disabilities here]**.

**[Give a short summary of how ICE/relevant agency discriminated against you]** In the following subsections, I explain these claims in more detail.

### **A. ICE and its Contractors Have Discriminated Against Me Based on My Physical Disability**

**[Explain what your physical disability is, and then explain what the agency did to discriminate against you. If they refused to offer you adequate care, explain that here and describe the effect of that on you. If they refused to give you accommodations that they are required to provide, then explain what you believe you are entitled to, explain any evidence you have proving that they didn't provide accommodations to you, and state that this was a violation of the law. The more concrete proof you can offer (such as emails and records), the better. You can include your own sworn declaration or declarations from witnesses.]**

### **B. ICE and its Contractors Have Discriminated Against Me Based on My Mental Health Disability**

**[Do the same as above in Section I.A.]**

## **II. ICE and Its Contractors Have Violated My Health Rights**

The Constitution forbids government officials and their contractors from subjecting incarcerated individuals—including people in immigration detention—to conditions that expose them to a substantial risk of serious harm.<sup>70</sup> Here, **[Reference what the agency did and explain how this put you at risk.]**

Additionally, ICE and its contractors at the ICDC are obligated to follow ICE's Performance Based National Standards 2011 (PBNDS 2011). **[Cite to how the agency broke its own rules in the abuses you faced]**.

## **III. ICE and its Contractors Have Violated My Civil Rights**

**[Explain how DHS has violated your civil rights. What follows is an example section that will only apply to you if you think you experienced retaliation in violation of the First Amendment, for speaking out about harms or conditions at ICDC.]**

---

<sup>70</sup> See, e.g., *Farmer v. Brennan*, 511 U.S. 825, 838 (1994).

The Constitution forbids government officials and their contractors from punishing, suppressing, or chilling protected speech in violation of the First Amendment.<sup>71</sup> I experienced and witnessed retaliation by ICE and its contractors against myself and others for our efforts to protest or speak to federal investigators, news reporters, or other people outside of ICDC about the inhumane, unsafe conditions, and the mistreatment we experienced.

### **A. The General Culture of Retaliation at ICDC When I Expressed Legitimate Grievances**

ICE and its contractors engaged in a practice and pattern of retaliation against detainees for protesting conditions at ICDC. **[Include details of moments you experienced retaliation for speaking out about harms or conditions in general at ICDC.]**

### **B. Retaliation Against Me and Other Detainees for Speaking Out About Dr. Amin**

In September 2020, Dawn Wooten, a nurse working at ICDC, blew the whistle on ICE and its contractors' coercive gynecological procedures and related medical abuse of people detained at ICDC. In a report released by Project South and the Government Accountability Project, Ms. Wooten exposed ICDC's partnership with Dr. Amin and her allegations that he was pressuring women to undergo painful, life-altering and unnecessary gynecological procedures.<sup>72</sup> Since September 2020, over forty women detained at the ICDC have submitted sworn testimony about abuses at ICDC, Dr. Amin's wrongdoing, and the complicity of ICE agents and ICDC employees.<sup>73</sup> Many detainees, including myself, have faced retaliation or attempted retaliation for doing so.<sup>74</sup> **[Provide details explaining exactly how you have spoken out, how ICDC officials became aware of you speaking out, and how they retaliated against you for doing so.]**

---

<sup>71</sup> U.S. Const. amend. 1; *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

<sup>72</sup> See Press Release, Project South and U.S. Gov't Accountability Office, *Whistleblowing Nurse from Detention Center in Georgia Reports Unsafe Practices that Promote the Spread of COVID-19 in ICE Detention* (Sept. 14, 2020), <https://projectsouth.org/whistleblowing-nurse-from-detention-center-in-georgia-reports-unsafe-practices-that-promote-the-spread-of-covid-19-in-ice-detention/>.

<sup>73</sup> Jasmine Aguilera, *More than 40 Women File Class Action Lawsuit Alleging Medical Misconduct by ICE Doctor at Georgia Detention Center*, TIME.COM (Dec. 22, 2020), <https://time.com/5924021/women-lawsuit-irwin-detention-ice/>.

<sup>74</sup> *Id.*

The connection between my protected speech and the government retaliation violates the First Amendment.

#### IV. Requested Responses and Relief

**[Note: These requested responses and relief can change based on what you need most. While DHS CRCL cannot provide any legal remedies or relief, if they are on notice they may be able to direct the officials who can provide such remedies or relief to your case.]**

As described herein, I have been subjected to discriminatory conditions of confinement while imprisoned at the ICDC. My experiences are part of a systemic pattern of abuse experienced by detainees at ICDC.<sup>75</sup> At least some of these instances may constitute criminal behavior, including **[describe activities Dr. Amin or other officials at ICDC that you think amounted to criminal acts against you]**. Moreover, I and others detained at the ICDC were denied adequate medical and mental health care. **[Only include the following sentence if it applies to your specific experience:]** Finally, I and others faced retaliation for exercising protected speech rights related to all of these issues. The allegations warrant a thorough investigation by CRCL as well as any other relief the agency is able to facilitate. I respectfully request the following:

- 1) In light of my mental and physical health, and the failure of ICE and its contractors to reasonably care for me, I should **[remain out of physical custody/be immediately released from physical custody]**. In the alternative, DHS must ensure that I receive appropriate medical care and not be subjected to any form of retaliation for speaking out about medical abuse or other rights violations, whether in the past or future.
- 2) DHS should place a hold on my removal, pending adjudication of **[my immigration appeals, resolution of federal litigation in which I am a plaintiff/petitioner or a witness, and conclusion of all pending or future investigations by DOJ, FBI, Congress, and CRCL or other DHS units]**.
- 3) CRCL should conduct an independent and comprehensive evaluation of conditions at ICDC and all immigration detention facilities operated by LaSalle. This evaluation should include but not be limited to: an evaluation of medical and mental health care standards and practices, establishing a process for tracking and accommodating disabilities, establishing a process allowing detainees to safely and effectively make complaints regarding medical procedures or health conditions, and ensuring oversight of medical providers such as Dr. Amin. CRCL should bring in independent subject matter experts to support this investigation and make recommendations for improvements.

---

<sup>75</sup> Michelle Hackman & Alicia A. Caldwell, *Pattern of Unnecessary Gynecological Treatments Identified at Georgia ICE Facility*, WALL ST. J. (Oct. 27, 2020) <https://www.wsj.com/articles/pattern-of-unnecessary-gynecological-treatments-identified-at-georgia-ice-facility-11603803379>.

- 4) CRCL should also ensure that staff and contractors at the ICDC, as well as other immigration detention facilities, receive proper training with respect to the issues underlying this complaint. Such training should cover, at a minimum: proper standards of medical care; adherence to relevant portions of the Rehabilitation Act; and the need to respect and not retaliate against detainees who file complaints or otherwise speak out against medical abuses, health conditions, discrimination, or other abusive or unlawful conditions of confinement.
- 5) In recognition of [**adapt as necessary with your own personal experiences: (1) the serious harms that I and others at ICDC suffered, which included unlawful and possibly criminal activity; (2) my cooperation in the investigation of those harms; and (3) my long-term lawful presence in the United States, lack of any violent criminal history, and many close family members who are U.S. citizens or lawful permanent residents**] CRCL should facilitate any applicable remedial relief or assistance regarding my immigration status. This might include facilitating a law enforcement certification to support an application for U Visa, supporting requests for lawful permanent residence, and joining (or at least declining to oppose) my appeals or motions to reopen.
- 6) In the interim, I should be provided with deferred action until my immigration matters and all pending investigations are resolved.

ICE and officials at ICDC subjected me to punitive and abusive treatment and reckless or deliberate indifference to my [**medical and mental health needs – adapt as applicable to your situation**]. This exacerbated my fragile mental and physical state. It also violated federal regulatory rules and the Constitution. I urge CRCL to take immediate action to ensure the well-being of myself and of other individuals that have been or may be subjected to the ICDC's abusive and neglectful practices.

Thank you for your urgent attention to these critical matters. Please do not hesitate to contact me for additional information.

Very truly yours,

---

[Name and Signature]

## **Appendix D: U Visa Request Template**

### ***Via Email***

Kathryn Gilbert, Esq.

Assistant U.S. Attorney

Kathryn.Gilbert@usdoj.gov

Matthew Josephson, Esq.

Assistant U.S. Attorney

Matthew.Josephson@usdoj.gov

[ADD DATE]

**Re: Request for U Visa Certification (I-918 Supplement B Form) for [ADD NAME], A Survivor of Criminal Activity at the Irwin County Detention Center**

Dear Ms. Gilbert and Mr. Josephson:

I write to request U Visa certifications (I-918 Supplement B Forms) on behalf of [ADD NAME]. She has been a victim of criminal activity involving violations of federal, state, and local law during her detention in federal custody at the Irwin County Detention Center (ICDC) in Ocilla, Georgia. Specifically, [ADD NAME] is a victim of abusive sexual contact, felonious assault, female genital mutilation, sexual assault, sexual exploitation, and/or similar crimes at the hands of Dr. Mahendra Amin.<sup>76</sup> She has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of criminal activity. She is eligible to pursue U nonimmigrant status due to the crimes against her and her willing cooperation in investigations concerning those crimes. [ADD NAME] qualifies for and should be given a U Visa certification immediately.

---

<sup>76</sup> [INCLUDE THIS FOOTNOTE IF APPLICABLE] [ADD NAME] is also the victim of obstruction of justice and witness tampering because federal officers and ICDC guards have retaliated against her for speaking out about her experiences. *See Oldaker v. Giles*, No. 7:20-cv-00224-WLS-MSH (M.D. Ga.).

[ADD NAME] has prepared sworn testimony about her experiences as a victim of criminal activity. [IF APPLICABLE] This testimony, as well as expert medical and mental health testimony, is enclosed with this request. [ADD NAME] is eager to participate in interviews with investigators from the Department of Justice, Department of Homeland Security Office of the Inspector General, and the Federal Bureau of Investigations. [IF APPLICABLE] [ADD NAME] has already filed complaints concerning the criminal activity with the DHS Office for Civil Rights and Civil Liberties.

The horrors that [ADD NAME] endured were not isolated experiences. Like dozens of other women, [ADD NAME] endured a pattern of unnecessary, invasive, forced medical procedures at the hands of Dr. Amin. When reviewed collectively, it is clear that Dr. Amin's actions were criminal. The collective nature of the criminal activity has added significance because [ADD NAME] was not only an individual victim, but was a witness to her companions' harms and [IF APPLICABLE] served as their caretaker. [IF APPLICABLE] Some of these companions have since been released or deported with no known way to contact them, making witness testimony the only source of information about their medical abuse and related suffering. Moreover, bearing witness to pervasive criminal activity perpetrated against others, particularly in a captive environment, is itself a source of harm and trauma. I therefore urge you to approve a U Visa certification for [ADD NAME].

Please note that the enclosed information is based on personal medical files, and other similar highly personally and private medical and other personal information pertaining to each woman. Pursuant to section 552(b)(6) of the Freedom of Information Act ("FOIA"), and any other applicable statute or regulation protecting privacy, the contents of this submission are confidential and exempt from disclosure. If any FOIA request is made related to the enclosed claims, I ask that the government (1) notify the undersigned before responding; (2) confirm that it will not disclose the confidential information contained in this submission; and (3) redact any and all confidential information contained in the submission.

Very truly yours,

[ADD SIGNATURE BLOCK]