



November 1, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

Dear Secretary Mayorkas:

We urge you to direct U.S. Customs and Border Protection (CBP), including its component agency Border Patrol, to issue a policy prohibiting the detention of people who are pregnant, postpartum, and/or nursing consistent with the policy recently issued by U.S. Immigration and Customs Enforcement (“ICE”). Such a policy is vital to ensuring the dignity and health of these individuals and their newborn children, particularly during a continued global pandemic. This policy is strongly counseled in light of a recent report by the Department of Homeland Security (DHS) Office of Inspector General (OIG),¹ which revealed CBP’s lack of necessary processes and guidance to appropriately care for pregnant individuals, and years of documentation by non-governmental organizations regarding serious mistreatment suffered by people in CBP custody.

In April 2020, several signatories of this letter requested that the DHS OIG review the Border Patrol’s treatment of a pregnant woman at the Chula Vista Border Patrol Station, who reportedly gave birth while standing up and holding onto the edge of a garbage can for support, delivering the baby into her pants, and who was brought back to the station with her newborn child for additional detention after being released from the hospital.² In July 2021, OIG issued the resulting public report, confirming a number of deeply troubling aspects of that account.³ As this case and the OIG’s report highlight, current CBP policy is wholly inadequate and has exposed pregnant people and their U.S. citizen newborns to serious dangers related to their health and safety.

A change in CBP policy is required to prevent what happened to the woman who was the subject of this report from ever occurring again—including CBP’s failure to ensure she was given timely medical care while she was in labor, lack of privacy during and following the traumatic birth, and a night of postpartum detention in which she was forced to sleep on a bench together with her two-day old newborn U.S. citizen baby.

¹ DEP’T OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, REVIEW OF THE FEBRUARY 16, 2020 CHILDBIRTH AT THE CHULA VISTA BORDER PATROL STATION, at 18 (July 20, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-49-Jul21.pdf>.

² See Letter from Sens. Blumenthal, Markey, Hirono, Carper, Durbin, Warren, Harris, Van Hollen, Booker, Duckworth, Gillibrand, Klobuchar, and Merkley to Joseph V. Cuffari, Department of Homeland Security Office of Inspector General, Apr. 8, 2020, available at <https://www.blumenthal.senate.gov/imo/media/doc/FINAL%20CBP%20Mistreating%20Pregnant%20Individuals%20Letter.pdf>.

³ DEP’T OF HOMELAND SEC., *supra* note 1, at 3.

ICE recently issued a similar policy. It states, “[g]enerally, ICE should not detain, arrest, or take into custody” people who are “known to be pregnant, postpartum, and/or nursing.”⁴ DHS should build upon this welcome development by expanding it to ensure that CBP also refrains from detaining people who are pregnant, postpartum, and/or nursing. This would bolster consistency across DHS and also help preserve the agency’s resources. It is particularly unnecessary for CBP to detain people who are pregnant, postpartum, and/or nursing, given that consistent with the recent ICE policy, ICE will ultimately release them.

Specifically, and consistent with the DHS OIG’s recommendations, we urge CBP to issue a policy prohibiting the detention of people who are known to be pregnant, postpartum, and/or nursing for any period longer than the minimum time necessary to process them for release from CBP custody. Such a policy would further clarify CBP’s National Standards on Transport, Escort, Detention, and Search, which require that no detainee should generally be held longer than 72 hours in CBP holding facilities and already recognize pregnant individuals as an “at-risk population” requiring additional care and oversight.⁵ In formulating this policy, we urge CBP to include at least these four key parameters:

1. Minimize the time that people who are pregnant, postpartum, and/or nursing and their families are in CBP custody to the minimum time period necessary to process them for release from CBP custody, and strictly prohibit them from being detained overnight;
2. Guarantee that, when CBP agents and officers choose where and how to process them, whether in the field, at a Border Patrol station, or at any other CBP facility, the health and safety of people who are pregnant, postpartum, and/or nursing is paramount;
3. Proactively assess and address the urgent needs of people who are pregnant, postpartum, and/or nursing for medical care, including requiring prompt transport to offsite hospitals where warranted; and
4. Ensure that, together with their families, such people are released from CBP custody as soon as possible after discharge from an offsite hospital, and that they are not transferred back to CBP detention for any purposes, including processing.

Many of these elements are similar to ICE’s policy and are necessary to ensure the safety of pregnant people in CBP’s custody.⁶

In an August 18, 2021 memo, CBP Acting Commissioner Troy A. Miller acknowledged “CBP leadership has concluded that the treatment of women who give birth in CBP custody raises significant humanitarian and public health interests[.]”⁷ The memo instructs CBP agents and officers to “consider that public health and humanitarian interests may weigh in favor of an

⁴ *Directive: Identification and Monitoring of Pregnant Detainees*, U.S. IMMIGR. & CUSTOMS ENF’T (July 1, 2021), <https://www.ice.gov/directive-identification-and-monitoring-pregnant-postpartum-or-nursing-individuals>.

⁵ U.S. CUSTOMS AND BORDER PROTECTION, NATIONAL STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

⁶ Consistent with the parallel ICE policy and with the recommendations in the OIG report, we additionally recommend that CBP document any and all instances in which it takes into its custody persons who are pregnant, postpartum, and/or nursing and instances of childbirths that occur in custody, and that CBP regularly monitor and document the health, well-being, and medical needs of detained newborn babies and people who are pregnant, postpartum, and/or nursing.

⁷ Memorandum from Troy A. Miller, Acting Comm’r, U.S. Customs and Border Protection (Aug. 18, 2021).

exception” from Title 42 expulsions, and also requires CBP to offer a medical assessment to those who indicate they are pregnant, if a medical provider is present at the facility. However, this memo fails to instruct CBP to avoid or minimize the detention of such individuals, despite acknowledging the harm that detention does to pregnant people and people who give birth in CBP custody. A policy like the one we urge in this correspondence is critical to protect the health and safety of people who are pregnant, postpartum, and/or nursing, and of newborn U.S. citizen babies.

We would like to arrange for a staff briefing on this issue as soon as practicable. Please contact David Stoopler (David_Stoopler@judiciary-dem.senate.gov) and Alexander Nabavi-Noori (Xander_Nabavi-Noori@judiciary-dem.senate.gov) in Sen. Blumenthal’s office to arrange that briefing and if you have any questions.

Sincerely,



RICHARD BLUMENTHAL
United States Senator



EDWARD J. MARKEY
United States Senator



CORY A. BOOKER
United States Senator



MAZIE K. HIRONO
United States Senator



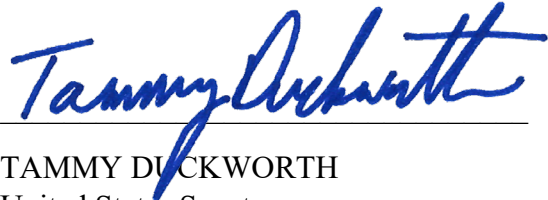
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