

# United States Senate

WASHINGTON, DC 20510

February 12, 2020

Mr. Mark A. Morgan  
Acting Commissioner  
U.S. Customs and Border Protection  
U.S. Department of Homeland Security  
1300 Pennsylvania Ave, N.W.  
Washington, D.C. 20229

Dear Acting Commissioner Morgan:

We have recently been made aware of extremely disturbing reports that U.S. Customs and Border Protection (CBP) officials are mistreating pregnant migrants in CBP custody.<sup>1</sup> These reports, combined with public reporting that CBP is returning pregnant asylum seekers to Mexico in contravention even of the deeply-flawed Migrant Protection Protocols (MPP), raises serious concerns for the health and safety of these individuals.<sup>2</sup> We request your prompt response to the questions outlined in this letter.

According to a U.S. Department of Homeland Security (DHS) Inspector General Complaint submitted by the American Civil Liberties Union (ACLU), the abuses include a CBP official slamming a woman who was six-months pregnant repeatedly into a fence and denial of medical care to at least three pregnant women in detention. All three women described pleading with CBP personnel to be taken to a doctor or the ability to access clean clothes and unspoiled food. CBP personnel refused to take them seriously, with one reportedly responding: “Don’t be so dramatic.”<sup>3</sup> As a result, at least one woman miscarried.<sup>4</sup> We should not need to point out that this treatment is absolutely unacceptable.

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<sup>1</sup> Letter from ACLU to Joseph V. Cuffari, Department of Homeland Security Office of Inspector General, Re: U.S. Customs and Border Protection and Border Patrol’s Mistreatment of Detained Pregnant People, Jan. 22, 2020, available at <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>.

<sup>2</sup> See e.g. Human Rights Watch, “Q&A: Trump Administration’s “Remain in Mexico” Program.” Jan. 29, 2020, available at <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program#>

<sup>3</sup> Letter from ACLU to Joseph V. Cuffari, Department of Homeland Security Office of Inspector General, Re: U.S. Customs and Border Protection and Border Patrol’s Mistreatment of Detained Pregnant People, Jan. 22, 2020 at 9, available at <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>.

<sup>4</sup> *Id.* at 10.

These reports are especially infuriating in light of CBP's evasion of congressional oversight. In March 2019, in questions for the record submitted following an oversight hearing,<sup>5</sup> Senator Blumenthal requested that CBP provide "a list of every documented instance in the past two years of a CBP officer restraining or shackling a pregnant woman." CBP responded that it "cannot provide this data as the agency does not have a mechanism in place for tracking this information."<sup>6</sup>

This response raises serious questions. First, in explaining CBP's opposition to a categorical ban on shackling pregnant individuals in detention, CBP stated that "this action is exceedingly rare."<sup>7</sup> CBP cannot claim that shackling pregnant individuals is "rare" when it also claims that it does not keep records on those instances. How does CBP know how often this happens if it does not have a "mechanism in place for tracking this information"? Indeed, public reporting indicates that shackling pregnant migrants "around their hands, legs, and belly," especially while being transported between holding centers, may very well be a regular occurrence.<sup>8</sup> Additionally, the Department of Homeland Security Appropriations Act of 2020 prohibits the use of funds for placing restraints on women in DHS custody who are pregnant, absent an individualized determination that the woman is a serious flight risk or immediate and serious risk to herself or others. It is unclear how CBP can ensure compliance with this requirement without adequate records.

Second, CBP claimed that it is in compliance with the 2015 National Standards on Transportation, Escort, Detention, and Search (TEDS) policy, which, as CBP noted in its response, requires that all instances of restraining or shackling pregnant detainees "must be documented in the appropriate electronic system(s) of record, including the facts and the reasoning behind the decision."<sup>9</sup>

If CBP were in compliance with TEDS, then it *would* have records about each instance of shackling or restraining pregnant migrants in custody. Either CBP is not in compliance with TEDS or these records do exist. If the former, then we urge CBP to ensure that it complies with this policy as soon as possible. If the latter, we renew our request for records pertaining to each instance that CBP has used shackles or restraints on pregnant individuals. In light of reports that CBP personnel are mistreating pregnant people in detention, we are especially disturbed by the prospect that CBP is not complying with pre-existing obligations to monitor how it is treating pregnant people in its custody.

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<sup>5</sup> *Oversight of Customs and Border Protection's Response to the Smuggling of Persons at the Southern Border: Hearing before the S. Comm. On the Judiciary*, 116th Cong. (2019).

<sup>6</sup> MCALEENAN RESPONSES TO QFRS at 48 (2019).

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

<sup>8</sup> Ema O'Connor and Nidhi Prakash, *Pregnant Women Say They Miscarried in Immigration Detention and Didn't Get the Care They Needed*, BuzzFeed News, July 9, 2018, available at <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump>.

<sup>9</sup> McAleenan Responses *supra* n. 2 at 48; *see also* U.S. CUSTOMS & BORDER PROTECTION, NATIONAL STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH at 23 (2015).

Even in the absence of TEDS, we trust that CBP would want to be fully informed about how often it is restraining pregnant migrants. As you know, this practice can have tragic consequences. The American College of Obstetricians and Gynecologists has long warned that use of restraints can “put the health of the [pregnant person] and fetus at risk” by increasing the chances of developing blood clots, interfering with the ability of medical professionals to treat preeclampsia and other potentially fatal complications, and preventing pregnant individuals from being able to break their falls.<sup>10</sup> Indeed, up until 2017, it was CBP policy to never detain pregnant individuals barring exceptional circumstances. Since the Trump administration’s decision to reverse that policy, the rate of miscarriages reported in CBP and U.S. Immigration and Customs Enforcement custody has nearly *doubled*.<sup>11</sup>

Given the medical consensus that shackling “not only compromise[s] health care but is demeaning and rarely necessary,”<sup>12</sup> there should be no reason that CBP is using the practice except in exceedingly rare circumstances and we hope that CBP is, in fact, currently keeping records on each instance of shackling or restraining pregnant migrants in its custody. If not, we urge you to do so as quickly as possible.

We request answers to the following questions no later than February 28, 2020:

- 1. Does CBP keep records of each instance of shackling a pregnant individual in detention, as required by TEDS? If not, why not?**
  - a. If CBP does not keep those records, has CBP conducted an analysis of how that practice is consistent with TEDS? If so, please provide that analysis.**
  - b. If CBP does keep those records, please provide them.**
- 2. Does CBP keep records on the rates of miscarriages and other pregnancy-related complications that CBP detainees experience in or as a result of CBP custody? If not, why not? If yes, please provide those records.**
- 3. Does CBP keep records of complaints by pregnant detainees about mistreatment by CBP personnel? If not, will you commit to doing so?**
- 4. How does the agency hold CBP officers who mistreat detainees in their custody accountable?**
- 5. How many CBP employees have been disciplined for mistreating pregnant detainees in the last three years? How many CBP employees have been fired for mistreating pregnant detainees in the last three years?**
- 6. Is CBP in compliance with requirements to make individualized determinations any time a pregnant detainee is placed in restraints?**

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<sup>10</sup> HEALTH CARE FOR PREGNANT AND POSTPARTUM INCARCERATED WOMEN AND ADOLESCENT FEMALES, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (reaffirmed 2019), available at <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>.

<sup>11</sup> PHYSICIANS FOR HUMAN RIGHTS, HEALTH HARMS EXPERIENCED BY PREGNANT WOMEN IN U.S. IMMIGRATION CUSTODY at 1 (2019), available at <https://phr.org/wp-content/uploads/2019/12/PHR-Pregnant-Women-in-Immigration-Custody-Fact-Sheet-Nov-2019.pdf>

<sup>12</sup> HEALTH CARE FOR PREGNANT AND POSTPARTUM INCARCERATED WOMEN AND ADOLESCENT FEMALES, *supra* n. 6.

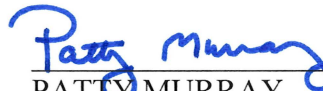
7. What guidance or training exists for CBP personnel with respect to applying MPP to pregnant individuals? Please provide documentation of any such guidance or training.
8. Has CBP entered pregnant individuals into the MPP program? If so, how many?

Thank you for your attention to this important matter. If you have any questions, please contact Charlotte Schwartz in Sen. Blumenthal's office ([Charlotte\\_Schwartz@blumenthal.senate.gov](mailto:Charlotte_Schwartz@blumenthal.senate.gov)).

Sincerely,


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RICHARD BLUMENTHAL  
United States Senate



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PATTY MURRAY  
United States Senate



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JEFFREY A. MERKLEY  
United States Senate



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KAMALA D. HARRIS  
United States Senate



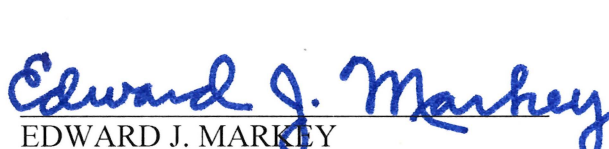
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ELIZABETH WARREN  
United States Senate



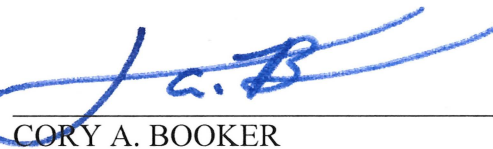
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SHERROD BROWN  
United States Senate



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TAMMY DUCKWORTH  
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*Mazie K Hirono*

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MAZIE K. HIRONO  
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*Dick Durbin*

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RICHARD J. DURBIN  
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*Amy Klobuchar*

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AMY KLOBUCHAR  
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*Maria Cantwell*

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MARIA CANTWELL  
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