

April 25, 2023

Acting Commissioner Troy Miller
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Via email

Re: Limiting U.S. Customs and Border Protection's Detention of People Who Are Pregnant, Postpartum and/or Nursing

Dear Acting Commissioner Miller:

This letter is in follow-up to our correspondence to then-Commissioner Magnus dated October 20, 2022 (enclosed), to which we have yet to receive any written response.

The 66 undersigned organizations and 114 medical professionals and individuals write to once more demand U.S. Customs and Border Protection (CBP) limit its detention of people who are pregnant, postpartum, and/or nursing, and their families, to the minimum time period necessary to process them for release to their networks of care in the United States. As we have explained at length, CBP's current policies and practices are inadequate to protect the reproductive health of migrants in CBP custody, and they are inconsistent with U.S. Immigration and Customs Enforcement (ICE)'s recognition that this population should not be detained absent exceptional circumstances.¹ Recent and imminent border policy changes only underscore the urgency of the need for changes in CBP policy to:

- Expedite processing to minimize the time that people who are pregnant, postpartum, and/or nursing, and their families, are in CBP custody to only the time period necessary to process them for release from CBP custody. In no case should custody exceed 12 hours from the time of initial apprehension.
- Ensure that, together with their families, people who are pregnant, postpartum and/or nursing are released from CBP custody as soon as possible after any discharge from an offsite hospital, and are not transferred back to CBP detention for any purposes, including processing.

We have previously described in detail the horrific experience of Ana, who in February 2020 was denied basic medical care while in CBP custody and forced to give birth in the Chula Vista Border Patrol Station in San Diego Sector while holding onto a garbage can for support and, after being taken to an offsite hospital following the birth, was forced to return to the station for a night of

¹ U.S. Immigration and Customs Enforcement, *ICE Directive 11032.4: Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals* (July 1, 2021), https://www.ice.gov/doclib/detention/11032.4_IdentificationMonitoringPregnantPostpartumNursingIndividuals.pdf.

postpartum detention with her newborn U.S.-Citizen baby.² As you know, Ana’s experience prompted a series of letters from U.S. Senators urging CBP to stop detaining pregnant people beyond the minimal time needed to process them for release, and a report from the Department of Homeland Security Inspector General outlining deficiencies in the agency’s handling the incident.³

As we have shared on numerous occasions with your agency, CBP’s subsequent policy change in November 2021, which in part provides for the provision of snacks and baby formula to this vulnerable population,⁴ fails to recognize that with or without “safeguards,” CBP detention facilities are categorically unsuitable for people who are pregnant, postpartum, and/or nursing, and their families.

Indeed, CBP’s failure to adopt a clear and consistent policy to limit the detention of pregnant, postpartum, and/or nursing people has continued to manifest in dangerous ways. In October 2022, we wrote about one such experience of a mother whose 6-month-old baby was denied medical assistance for days while in CBP custody. Since then, we have learned of more accounts that underscore the urgency of these changes:

- In May 2022, Ailyn, a 28-year-old Colombian woman who was pregnant crossed the border near Yuma, Arizona. Upon surrendering to officials, she and her partner, the father of her baby, were detained separately in Border Patrol custody. **Ailyn remained in Border Patrol custody for 16 days before being released to her network of care in the United States.** Soon after being detained, she informed agents of her pregnancy, but they expressed disbelief due to her thin physique. She was also ill with a suspected infection upon arrival and was sent to the infirmary multiple times but was initially denied a pregnancy test and appropriate medical treatment. Ailyn was eventually sent to an offsite hospital for treatment before being released, but the delay in accessing appropriate medical care and the prolonged detention in Border Patrol custody caused her extreme distress and fear at the possibility of losing her pregnancy. Ailyn gave birth in December 2022, but remains traumatized by her experience in CBP custody.

² ACLU of San Diego and Imperial Counties and Jewish Family Services, Letter to Office of Inspector General Re: U.S. Border Patrol’s Abuse and Mistreatment of [redacted] (April 8, 2020), https://www.aclu-sdic.org/sites/default/files/2020-04-07-oig-cmplt-final_redacted.pdf.

³ Letter from Senator Blumenthal, et al., to Secretary Alejandro Mayorkas (Nov. 1, 2021), <https://www.blumenthal.senate.gov/imo/media/doc/2021.11.01%20DHS%20CBP%20Pregnancy%20Policy%20Letter.pdf>; Office of Inspector General, OIG-21-49, *Review of the February 16, 2020 Childbirth at the Chula Vista Border Patrol Station* (July 20, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-49-Jul21.pdf>.

⁴ U.S. Customs and Border Protection, *Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody* (Nov. 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/pregnancy-postpartum-infants-policy-signed.pdf#:~:text=See%20CBP%20Policy%20Memorandum%2C%20Pregnancy%20and%20Childbirth%20Guidance%2C.baby%20wipes%2C%20and%20infant%20formula%20available%20for%20infants.>

- In January 2023, Border Patrol agents apprehended and transported a pregnant woman who was having contractions to a San Diego hospital. While at the hospital, Border Patrol agents attempted to separate the pregnant woman from her school-aged daughter. The agents communicated that they would be returning the daughter to the Border Patrol station without her mother, causing both the pregnant woman and the child significant distress. The agents also indicated an intent to return the pregnant mother to the Border Patrol station at the conclusion of her medical treatment. It took the intervention of the treating physician and of advocates with Jewish Family Service of San Diego to prevent the harmful separation and return to the Border Patrol station.
- In March 2023, a woman in her fourth month of pregnancy was apprehended by Border Patrol agents near McAllen, Texas, and was detained in Border Patrol custody. After eight days in Border Patrol custody without adequate access to medical care or basic necessities, she was summarily expelled to Guatemala, presumably pursuant to Title 42, without being given an opportunity to seek asylum in the United States.

The accounts above make clear that a policy protecting pregnant, postpartum, and nursing people in CBP custody is needed regardless of whether the Title 42 order is in effect at the border. However, now is a particularly critical moment for change in light of the imminent termination of Title 42, scheduled to take effect just weeks from now on May 11, which will require CBP to return to the processing of individuals under Title 8 of the U.S. Code. As you know, crowding in CBP facilities places all people at a greater risk, and raises special concern for the health and safety of people who are pregnant, postpartum, and/or nursing.

It is critical that CBP adopt a policy of expediting the release of people who are pregnant, postpartum, and/or nursing as part of its plan to operationalize changes in border policy in a manner that protects the dignity and wellbeing of all people.

In Commissioner Magnus's response to the Senators in Spring 2022, he indicated that "CBP shares [a] desire to ensure that vulnerable populations spend as little time in custody as possible and are adequately cared for in the limited time they spend in [CBP] facilities."⁵ Now is the time for the agency to turn that desire into policy, and adopt changes that will ensure CBP's consistent, safe, and humane treatment of people who are pregnant, postpartum, and/or nursing.

Thank you for your attention to this important matter. We look forward to a response by May 22, 2023. If you have any questions or need further detail, please contact Monika Y. Langarica, Staff Attorney, UCLA Center for Immigration Law and Policy (langarica@law.ucla.edu) and Kate Clark, Senior Director of Immigration Services, Jewish Family Service of San Diego (katec@jfssd.org).

Sincerely,

UCLA Center for Immigration Law and Policy
Jewish Family Service of San Diego
American Civil Liberties Union

⁵ Enclosed in October 2022 correspondence.

Together with the following 63 advocacy organizations and 114 medical professionals and individuals:

Advocacy organizations:

1. #WelcomeWithDignity
2. Al Otro Lado
3. Alliance San Diego
4. ASISTA Immigration Assistance
5. Asylum Seeker Advocacy Project (ASAP)
6. Border Angels
7. Border Servant Corps
8. Catholic Legal Immigration Network, Inc. (CLINIC)
9. Church World Service
10. Coalition for Humane Immigrant Rights (CHIRLA)
11. Coalition on Human Needs
12. CSA San Diego County
13. Diocesan Migrant and Refugee Services Inc.
14. Espacio Migrante
15. Florence Immigrant & Refugee Rights Project
16. Freedom for Immigrants
17. Haitian Bridge Alliance
18. Houston Immigration Legal Services Collaborative
19. Human Rights First
20. Immigrant Defenders Law Center
21. Immigration Equality
22. Indivisible 49
23. Indivisible Marin
24. International Rescue Committee
25. Jane's Due Process
26. JT Family Care
27. Justice Action Center
28. Justicia Digna
29. Kehilla Community Synagogue
30. Las Americas Immigrant Advocacy Center
31. Lawyers for Good Government
32. League of Conservation Voters
33. Legal Services for Children
34. Muslim Advocates
35. National Immigrant Justice Center
36. National Immigration Law Center
37. National Immigration Litigation Alliance
38. National Latina Institute for Reproductive Justice
39. National Network for Immigrant and Refugee Rights (NNIRR)
40. National Organization for Women
41. Oxfam America
42. ParentsTogether

43. Physicians for Human Rights
44. Planned Parenthood Federation of America
45. ProtectAZ Health
46. Public Law Center
47. San Diego Immigrants Rights Consortium
48. San Diego Rapid Response Network
49. Save the Children
50. SEIU Local 221
51. Services, Immigrant Rights and Education Network (SIREN)
52. Southern California Care Community
53. Southern California Immigration Project
54. Student Clinic for Immigrant Justice
55. Survivors of Torture, International
56. Tahirih Justice Center
57. The Advocates for Human Rights
58. UCSD
59. United We Dream
60. Wind of the Spirit Immigrant Resource Center
61. Witness at the Border
62. Women's Refugee Commission
63. Young Center for Immigrant Children's Rights

Medical professionals and individuals:

1. Aileen Portugal, MD
2. Alan Shahtaji, DO
3. Alejandro Castanon
4. Alex Romero
5. Aliyah Snedden
6. Allison Estrada, MD
7. Alvaro Garza
8. Amanda McInerney
9. Amran Elmi
10. Ana Morales Clark
11. Ana Ortiz, MD
12. Ann Hoffman
13. Anna Talamantes
14. Annie Odelson
15. Arij Faksh, DO
16. Auria Kamal
17. Betsy Berg
18. Britney Le
19. Brooke Johnson
20. Brooke Ray, NP
21. Caitlin MacMillen, DO
22. Calla Brown, MD, MHR
23. Camille Brown, MD
24. Carla Olmos

25. Carol Clause
26. Carrie Weisbaum
27. Cassandra Ford
28. Catherine Morelle Oliveira
29. CelesteCaton
30. Cheryl Zaccagnini
31. Claudine Thompson
32. Courtney Brown
33. Cristina Rangel Batalla
34. Crystal Irving
35. Daisy Leon-Martinez, MD
36. Daniel Neuspiel
37. Daniel Solomon
38. David Garcias
39. Deb Jacobs
40. Debra Cornelius
41. Diana Aguirre
42. Diana Robles, MD FACOG
43. Elena Jiménez Gutiérrez, MD
44. Ellen Grady-Sessa
45. Emily Snyder
46. Evan Tamura
47. Fatima Jimenez
48. Frida Vargas, FNP
49. Gail Krowech
50. George Longstreth
51. Hussa Moosa
52. Irene Vecchio
53. Isela Martinez SanRoman
54. Isis Goldberg
55. Jacqueline Villanueva Felix
56. James Camp
57. Jessica Dally
58. John Tran, MD
59. Kareen Espino
60. Karen Longstreth
61. Karen Vazquez Rosas
62. Kathy Minton
63. Kay Daniels, MD
64. Kiana Tom
65. Leah Good
66. Leslie Mullin
67. Linda Hill, MD, MPH
68. Lindsay Waters
69. Lita Krowech
70. Lucy Horton

71. Margaret Baker
72. Maria Cordero
73. Maria Reyes
74. Maria Thomson
75. Marsha Griffin, MD
76. Martha Siqueiros
77. Mayra Hayden
78. Megan Hope
79. Megha Shankar, MD
80. Melissa Campos, MD
81. Michelle Hoo
82. Michelle Khan
83. Michelle Lough
84. Michelle Ramirez
85. Misty O'Healy
86. Nancy Carballo, MD
87. Natalie Spicyn, MD, MHS
88. Nicole Elizabeth Ramos
89. Omar Hussein
90. Pratiksha Jaiswal
91. Rachel Xue
92. Ramla Mohamoud
93. Ramsey Salem
94. Raul Gonzalez
95. Rebecca Vu
96. Risa Farrell
97. Robert Mutchnick
98. Rocio Ramirez
99. Roshni Kakaiya, DO
100. Sahana Somasegar
101. Santosh Vetticaden
102. Sarah Koenig
103. Stephanie Turcios
104. Tamara Denlinger
105. Thomas Cartwright
106. Tim O'Healy
107. Toni Biskup, MD
108. Valeria Luiselli
109. Vanessa Garcia
110. Veronica Gonzalez, MD
111. Vivian Leal
112. Wayne Cornelius
113. Winifred Cox Schultz
114. Yevonne Park

Enclosure: October 2022 Letter

Enclosure: October 2022 Letter

October 20, 2022

Commissioner Chris Magnus
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Via email

Re: Limiting Customs and Border Protection's Detention of People Who Are Pregnant, Postpartum and/or Nursing, and Infants

Dear Commissioner Magnus:

The 137 undersigned organizations and medical professionals write to demand Customs and Border Protection (CBP) limit its detention of pregnant, postpartum, nursing persons, and infants to the minimum time period necessary to process them for release from CBP custody. CBP's current policies and practices are inadequate, and are inconsistent with Immigration and Customs Enforcement's (ICE) recognition that this population should not be detained absent exceptional circumstances.¹

In February 2020, Ana² was arrested by Border Patrol officials while in active labor. She was denied adequate medical care and forced to give birth while holding onto a garbage can at the Chula Vista Border Patrol station. After being taken off site to a hospital following the birth, Ana and her U.S. citizen newborn were forced to return to the station for a night of postpartum detention. A subsequent complaint prompted a DHS Office of Inspector General (OIG) report that featured disturbing images of Ana laying on a concrete bench with her newborn U.S. citizen baby, wrapped in an aluminum blanket for warmth.³

On November 1, 2021, 11 U.S. senators wrote to Department of Homeland Security (DHS) Secretary Alejandro Mayorkas recommending DHS adopt a policy that: "Minimize[s] the time that people ... and their families are in CBP custody to the minimum time period necessary to

¹ U.S. Immigration and Customs Enforcement, *ICE Directive 11032.4: Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals* (July 1, 2021), https://www.ice.gov/doclib/detention/11032.4_IdentificationMonitoringPregnantPostpartumNursingIndividuals.pdf.

² Name has been changed to protect the identity of the individual.

³ ACLU of San Diego and Imperial Counties and Jewish Family Services, Letter to Office of Inspector General Re: U.S. Border Patrol's Abuse and Mistreatment of [redacted] (April 8, 2020), https://www.aclu-sdic.org/sites/default/files/2020-04-07-oig-cmplt-final_redacted.pdf; Office of Inspector General, OIG-21-49, *Review of the February 16, 2020 Childbirth at the Chula Vista Border Patrol Station* (July 20, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-49-Jul21.pdf>.

process them for release from CBP custody,” among other protective measures.⁴ We reiterate the senators’ recommendations and demand CBP take prompt action to protect this vulnerable population and address deficiencies in the agency’s current policy.

On November 23, 2021, CBP issued its current policy regarding pregnant, postpartum, nursing individuals and infants in custody.⁵ As the senators made clear in their follow-up correspondence, the policy guidance falls significantly short of what is needed to properly address the needs of this population.⁶

In your response to the senators in Spring 2022, you indicated that “CBP shares [a] desire to ensure that vulnerable populations spend as little time in custody as possible and are adequately cared for in the limited time they spend in [CBP] facilities.”⁷ In the letter, you explain that “[t]hese individuals are specifically prioritized for expedited processing;” however, the current policy fails to offer any mention of expedited processing or address the concern that detention in what are supposed to be short-term CBP facilities threatens the health and dignity of people who are pregnant, postpartum, and/or nursing, and their newborns.

Moreover, we do not believe that the current policy is having its intended effect of improving treatment and conditions for the population while in CBP facilities. For example, one mother from Nicaragua told the ACLU in March, 2022 that her 6-month-old son was denied medical assistance from CBP for four days, despite her requests and him having respiratory problems that caused pneumonia. She also reported agents yelled at her when she tried to breastfeed him and shamed her for doing so. The family was not provided an initial medical intake, was not given welfare checks every 15 minutes and was provided only water and milk for her children.

The risks of CBP detention that the new guidance purports to mitigate, including limited access to medical care and inadequate care for infants, could be prevented altogether if CBP instead prioritized prompt release of pregnant, postpartum, nursing persons, and infants.

We are encouraged that under the leadership of Secretary Mayorkas, DHS has taken steps to improve features of the immigration system that impact populations with unique needs. The

⁴ Letter from Senator Blumenthal, et al., to Secretary Alejandro Mayorkas (Nov. 1, 2021), <https://www.blumenthal.senate.gov/imo/media/doc/2021.11.01%20DHS%20CBP%20Pregnancy%20Policy%20Letter.pdf>.

⁵ U.S. Customs and Border Protection, *Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody*, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/pregnancy-postpartum-infants-policy-signed.pdf#:~:text=See%20CBP%20Policy%20Memorandum%2C%20Pregnancy%20and%20Childbirth%20Guidance%2C,baby%20wipes%2C%20and%20infant%20formula%20available%20for%20infants.>

⁶ Letter from Senator Blumenthal, et al., to DHS Secretary Alejandro Mayorkas and CBP Commissioner Chris Magnus (February 7, 2022), attached.

⁷ Letter from CBP Commissioner Chris Magnus to Senator Blumenthal (April 16, 2022), attached.

administration should continue to identify areas for further improvement and we ask that you promptly expand the November 23, 2021, policy to include specific directives to:

- a.) Expedite processing to minimize the time that people who are pregnant, postpartum, and/or nursing, and their families, are in CBP custody to only the time period necessary to process them for release from CBP custody. In no case should custody exceed 12 hours from the time of initial apprehension.
- b.) Ensure that, together with their families, people who are pregnant, postpartum, and/or nursing are released from CBP custody as soon as possible after any discharge from an offsite hospital, and not transferred back to CBP detention for any purposes, including processing.

Thank you for your continued consideration of these important issues. We look forward to receiving a response from you by November 30, 2022. In the meantime, if you have any questions or need further detail, please contact Shaw Drake, Senior Policy Counsel, ACLU (sdrake@aclu.org) and Monika Y. Langarica, Staff Attorney, UCLA Center for Immigration Law and Policy (langarica@law.ucla.edu).

Sincerely,

American Civil Liberties Union

Jewish Family Service of San Diego

UCLA Center for Immigration Law and Policy

And the undersigned Advocacy Organizations and Medical Professionals:

(82) Advocacy Organizations

#WelcomeWithDignity

African Human Rights Coalition

Al Otro Lado

Aldea - The People's Justice Center

Alianza Americas

Alliance San Diego

American Friends Service Committee (AFSC)

Asian Pacific Institute on Gender-Based Violence

Asylum Seeker Advocacy Project (ASAP)

Autistic Self Advocacy Network

Bend the Arc: Jewish Action

Border Organizing Project

Carolinas Pediatrics

Casa Familiar

Catholic Charities of Southern New Mexico

Catholic Legal Immigration Network

Center for Gender & Refugee Studies

Center for Law and Social Policy (CLASP)

Center for Victims of Torture

Children's HealthWatch

Church World Service

Coalition on Human Needs

Community for Children, Inc.

Comunidad de Apoyo San Diego

Doctors for Camp Closure

Espacio Migrante

Florence Immigrant and Refugee Rights Project

Freedom for Immigrants

Haitian Bridge Alliance

Houston Immigration Legal Services Collaborative

Human Rights First

Immigrant Defenders Law Center

Immigration Equality

Immigration Hub

International Rescue Committee

Justice Action Center

Kino Border Initiative

Latin American Working Group (LAWG)

Lawyers for Good Government

League of Conservation Voters

Migrant Clinicians Network

MomsRising

National Action Network, Washington Bureau

National Council of Jewish Women

National Immigrant Justice Center

National Immigration Law Center

National Immigration Litigation Alliance

National Immigration Project (NIPNLG)

National Justice For Our Neighbors

National Latina Institute for Reproductive Justice

National Partnership for Women & Families

NETWORK Lobby for Catholic Social Justice

New York Immigration Coalition

ParentsTogether

Physicians for Human Rights

Planned Parenthood Federation of America

Los Angeles City Health Commission

Project Lifeline

Refugee Health Alliance

Rocky Mountain Immigrant Advocacy Network

San Diego Immigrant Rights Consortium

San Diego Rapid Response Network

Sanctuary for Families

Save the Children

SIREN

South Bay People Power

Southern Border Communities Coalition

Southern California Immigration Project

Sunita Jain Anti-Trafficking Initiative

Tahirih Justice Center

Texas Civil Rights Project

The Children's Partnership

The Leadership Conference on Civil and Human Rights

The San Diego LGBT Community Center

UndocuBlack Network

Unified US Deported Veterans Resource Center

University of California, San Diego

Washington Office on Latin America

Wind of the Spirit Immigrant Resource Center

Witness in the Border

Women's Refugee Commission

Young Center for Immigrant Children's Rights

(52) Medical Professionals

Nina Agrawal, MD, American Medical Women's Association

Mia Aldridge, MD, Kaiser Permanente SFO Residency Program

Flavia Araujo, Clinical Instructor, Lucile Packard Children's Hospital at Stanford Hospital

Cassandra Armea-Warren, Regional Engagement Coordinator at Stanford University of Medicine

Nahiris M. Bahamon MD FAAP

Brindha Bavan, Clinical Assistant in Obstetrics and Gynecology

Bronwyn Baz, MD, FAAP, Oregon Health and Science University

Toni Biskup, MD, MPH, FAAP, FACP, Children's Hospital of Philadelphia

Camille Brown, MD, Assistant Clinical Professor of Pediatrics, Yale School of Medicine

Calla Brown, MD, MHR, University of Minnesota

Michael Caffery, MD

Grace Cavallaro, American College of Obstetricians and Gynecologists, District IX Section 3

Kay Daniels, Obstetrics & Gynecology - Maternal Fetal Medicine; CoDirector of OBS Im Program, Center for Pediatric and Perinatal Education at Lucile Packard Children's Hospital at Stanford Hospital

Allison Estrada, MD, Comunidad de Apoyo San Diego

Deborah Frank, MD, Children's Health Watch

Minal Giri, MD, Midwest Human Rights Consortium

Arturo Gonzalez, MD, Scottsdale Children's Group, a division of Arbor Medical Partners

Claudia Gonzalez, Research Administrator - Obstetrics & Gynecology, Stanford University

Karen Greiner, MD, MPH

Marsha Griffin, MD FAAP, Pediatrician

Anna Haas, Nurse Midwife, Holy Family Services

John Harlow, Attending Physician, Children's Hospital of Los Angeles

Kimberly Harney, Clinical Professor Emeritus Obstetrics & Gynecology

Paula Hillard, Professor at Stanford University School of Medicine

Charles J. Homer, MD, MPH, Advisory Board, Children's Health Watch, Boston, MA

Catalina Hoyos, MD, UPMC Children's Community Pediatrics

Amy Huibonhoa, MD

Amer Karam, Clinical Professor and Unit Medical Director at Stanford University Hospital

Michelle Khan, Clinical Associate Professor, Obstetrics and Gynecology, Stanford University

Stephanie Lee, MD

Stephanie Leonard, Instructor, Obstetrics & Gynecology, Stanford University

Stephanie Melchor, MD Obstetrics and Gynecology

Susana Mendez, Midwife at Lucile Packard Children's Hospital at Stanford University

Diana Montoya-Williams MD MSHP

Ana Morales Clark, Clinical Specialist, Lucile Packard Children's Hospital at Stanford University

Daniel Neuspiel, MD, MPH, FAAP

Juno Obedin-Maliver, MD, MPH, MAS Obstetrician/Gynecologist, Stanford University

Alicia Olave-Pichon, Physician

Anik Patel, MD, Children's Mercy Kansas City

Valerie Peicher, MD

Sarah Pfeil, Resident Physician, UC Davis Medical Center

Anne Pollard, Stanford University School of Medicine, Department of Obstetrics & Gynecology

Marha Rode, MD Clinical Associate Professor, Obstetrics and Gynecology, Stanford University

Julia Rosenberg, Assistant Professor, Pediatrics, Yale School of Medicine

Julia Rubin-Smith, MD, MSPH, Boston Children's Hospital

Reiko Sakai, Pediatric Hospitalist, Natividad Medical Center

Jamie Santillo, RN, Lucile Packard Children's Hospital at Stanford University

Laurence Shandler, MD

Sahana Somasegar, Physician at Stanford University

Natalie Spicyn, Internist and Pediatrician

Betti J. Steele, MD

Richard Wahl, MD, University of Arizona Department of Pediatrics

February 7, 2022

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

The Honorable Christopher Magnus
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Secretary Mayorkas and Commissioner Magnus:

We write in response to recent correspondence from U.S. Customs and Border Protection (CBP) regarding its November 23, 2021 policy establishing formal guidance related to care in custody and documentation requirements of people who are pregnant, postpartum, and/or nursing following a recent report by the U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG). We believe this new policy falls significantly short of the changes needed to address the harms that pregnant, postpartum, and/or nursing individuals have experienced in CBP custody that we highlighted in our November 1, 2021 letter to Secretary Mayorkas, and we reiterate our call to prohibit detention for these vulnerable populations.

On November 1, 2021, we wrote urging DHS to direct CBP, including its component agency Border Patrol, to issue a policy generally 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”).¹ That letter came on the heels of a DHS OIG report investigating the circumstances surrounding a woman who reportedly gave birth at the Chula Vista Border Patrol Station while standing up and holding onto the edge of a garbage can for support.² The report revealed CBP’s lack of necessary processes and guidance to appropriately care for pregnant, postpartum, and/or nursing individuals, and account for childbirths in its custody.³ Nongovernmental organizations have also produced several reports regarding serious

¹ Letter from Sens. Blumenthal, Markey, Booker, Hirono, Van Hollen, Padilla, Durbin, Duckworth, Warren, Feinstein, and Murray, to Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Nov. 1, 2021, <https://www.blumenthal.senate.gov/imo/media/doc/2021.11.01%20DHS%20CBP%20Pregnancy%20Policy%20Letter.pdf>.

² DEP’T OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, REVIEW OF THE FEBRUARY 16, 2020 CHILDBIRTH AT THE CHULA VISTA BORDER PATROL STATION, at 4 (July 20, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-49-Jul21.pdf>.

³ *Id.* at 5-6 (finding that Border Patrol “lacks the necessary processes and guidance to reliably track childbirths that occur in custody” and “did not always take prompt action to expedite the release of U.S. citizen newborns, resulting in some being held in stations for multiple days and nights”); *see also* 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, <https://www.blumenthal.senate.gov/imo/media/doc/2020.04.08%20DHS%20OIG%20Letter%20re%20CBP%20Mis%20treating%20Pregnant%20Detainees.pdf> (requesting that the OIG investigate reports of mistreatment of pregnant migrants in CBP custody).

mistreatment suffered by pregnant individuals in CBP custody.⁴

On January 7, 2022, CBP Deputy Commissioner Troy Miller responded to our letter by highlighting CBP's November 23, 2021 guidance document entitled, *Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody*. While we appreciate that CBP's new memo includes changes to improve the standards of medical and other care in custody for people who are pregnant, postpartum, and/or nursing, as well as for newborns, it fails to address the consequences of enforcement practices, including detention, on infants and people who are pregnant, postpartum, and/or nursing. CBP detention is unsuitable for these vulnerable populations.⁵ And, as we emphasized in our previous letter, it is particularly unnecessary for CBP to detain people who are pregnant, postpartum, and/or nursing, given that ICE will ultimately release them.⁶ Accordingly, CBP's new policy falls short of the changes necessary to protect people who are pregnant, postpartum, and/or nursing, and their infants.

We would like to reiterate our request that you urgently institute a policy against detaining people who are pregnant, postpartum, and/or nursing. Please contact David Stoopler (David.Stoopler@judiciary-dem.senate.gov) and Alexander Nabavi-Noori (Xander.Nabavi-Noori@judiciary-dem.senate.gov) in Senator Blumenthal's office if you have any questions.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



EDWARD J. MARKEY
United States Senate



CORY A. BOOKER
United States Senate



MAZIE K. HIRONO
United States Senate

⁴ See, e.g., *CBP's Long History of Mistreatment of Detained People*, ACLU SAN DIEGO & IMPERIAL CNTYS, <https://www.aclusandiego.org/en/cbps-long-history-mistreatment-detained-people> (compiling complaints against CBP for alleged mistreatment of detainees, including pregnant individuals).

⁵ As CBP Acting Commissioner Troy A. Miller has acknowledged, "the treatment of women who give birth in CBP custody raises significant humanitarian and public health interests[.]" Memorandum from Troy A. Miller, Acting Comm'r, U.S. Customs and Border Protection (Aug. 18, 2021).

⁶ *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> (stating that "[g]enerally, ICE should not detain, arrest, or take into custody" people who are "known to be pregnant, postpartum, and/or nursing").




CHRIS VAN HOLLEN
United States Senate



ALEX PADILLA
United States Senate



RICHARD J. DURBIN
United States Senate



TAMMY DUCKWORTH
United States Senate



ELIZABETH WARREN
United States Senate



DIANNE FEINSTEIN
United States Senate



PATTY MURRAY
United States Senate



U.S. Customs and Border Protection

Commissioner

April 16, 2022

The Honorable Richard Blumenthal
United States Senate
Washington, DC 20510

Dear Senator Blumenthal:

Thank you for your February 7, 2022 letter to the Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) regarding the care and custody of pregnant, postpartum, and nursing individuals in CBP custody. Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delay in responding.

CBP shares your desire to ensure that vulnerable populations spend as little time in custody as possible and are adequately cared for in the limited time they spend in our facilities. Following initial encounter at the border, CBP generally must transport individuals to a station for immigration processing and a custodial determination, followed by release or transfer as appropriate. CBP works to process vulnerable individuals, including those who are pregnant, postpartum, and nursing, as quickly as possible and then facilitates their safe release in coordination with community partners, except in circumstances where an individual's record requires referral to another law enforcement agency for detention. As the frontline DHS law enforcement agency at the border, CBP must process all migrants it encounters, including pregnant, postpartum, or nursing individuals, and hold them in custody until this processing can be accomplished.

Although CBP must hold these individuals until they can be processed, we have taken meaningful steps to ensure they spend as little time as possible in our custody and receive a high standard of care while they await processing (understanding that it may take time to transport individuals from the point of encounter to a CBP processing facility). These individuals are specifically prioritized for expedited processing and are treated in accordance with CBP's November 23, 2021 *Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody*. Under the policy, CBP agents and officers are required to:

1. Offer pregnant individuals a medical assessment at those CBP facilities on the southwest border with onsite medical support.

2. Perform welfare checks on pregnant, postpartum, nursing individuals, and infants (“covered individuals”) at least once every 15 minutes and accurately document all welfare checks.
3. Ensure pregnant, postpartum, nursing individuals, and infants are aware that they have regular access to snacks, water, milk, and juice.
4. Place covered individuals in the least restrictive setting possible, given facility and operational constraints.
5. Ensure that covered individuals are not required to stand for long periods of time and are provided appropriate space to sit/rest/sleep.
6. Ensure every reasonable effort is made to provide privacy to individuals who are breastfeeding.
7. Ensure CBP facilities have diapers, baby wipes, and infant formula available for infants.

CBP is committed to robustly implementing its new policy and will closely monitor the policy’s implementation over the coming months to ensure pregnant, postpartum, nursing individuals, and infants receive the high level of care they deserve and require.

Thank you again for your letter and the opportunity to brief your staff on this matter on February 23, 2022. The co-signers of your letter will receive a separate, identical response. Should you need additional assistance, please do not hesitate to contact me or have a member of your staff contact Stephanie A. Talton, Deputy Assistant Commissioner for the Office of Congressional Affairs, at 202-344-1760.

Sincerely,



Chris Magnus
Commissioner