

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