

United States Senate

WASHINGTON, DC 20510

April 27, 2018

The Honorable Richard Shelby
Chairman
Senate Committee on Appropriations

The Honorable Patrick Leahy
Ranking Member
Senate Committee on Appropriations

The Honorable Shelley Moore Capito
Chairwoman
Senate Committee on Appropriations
Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member
Senate Committee on Appropriations
Subcommittee on Homeland Security

Dear Chairman Shelby, Ranking Member Leahy, Chairwoman Capito, and Ranking Member Tester:

As your Subcommittees consider FY19 Department of Homeland Security (DHS) appropriations, we urge you to include report language that requires a presumption of release, absent extraordinary circumstances, for any pregnant women apprehended by or transferred to U.S. Immigration and Customs Enforcement (ICE). We also urge you to include report language requiring strict oversight of ICE's policies and practices on the detention of pregnant women including detailed reporting requirements on the number of pregnant women in ICE custody, the justification for their detention, and the length of their detention. The report language should include a directive that ICE conduct a weekly review of custody to determine whether detention of a pregnant woman continues to be appropriate.

As you know, ICE recently released a new directive that no longer favors the release of pregnant women.¹ The policy supersedes previous agency policy, the ICE Memorandum on the Identification and Monitoring of Pregnant Detainees, that generally discouraged the detention of pregnant women, required stricter oversight of their care while in custody, and required regular custody assessments for pregnant women who did remain in an ICE detention facility.² According to guidance accompanying the new directive, ICE will still consider release of pregnant women on a case-by-case basis. Only pregnant women in their third trimester will be considered more broadly for release, absent extraordinary circumstances.

¹ U.S. Immigration and Customs Enforcement, *Directive 11032.3, Identification and Monitoring of Pregnant Detainees*, Dec. 2017, available at

https://www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetainees.pdf

² U.S. Immigration and Customs Enforcement, *Policy 11032.2, Identification and Monitoring of Pregnant Detainees*, Aug. 2016, available at

https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf

It has been well documented that pregnant women receive insufficient care in detention.³ Detained pregnant women have reported inadequate and inappropriate medical and mental health care, often experiencing unacceptable delays in treatment or response to their concerns.⁴ They may be shackled despite their pregnancy; in one case, a pregnant woman was reportedly transferred no fewer than six times on several hour-long trips, including one 23 hour trip that resulted in hospitalization due to exhaustion and dehydration.^{[5][6]} Tragically, at least three women reportedly miscarried while in ICE custody in Fiscal Year 2017.⁷ The American College of Obstetricians and Gynecologists (ACOG), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP) have all stated their opposition to ICE's policy shift, noting that "the conditions in DHS facilities are not appropriate for pregnant women or children."⁸

Detention is also deeply traumatic for detained pregnant women. Pregnant women who have experienced ICE detention have repeatedly described the fear and uncertainty instilled by immigration detention.⁹ Detention in a remote facility reduces access to critical legal services and counsel, and the impact of detention additionally makes it difficult for a pregnant woman seeking asylum or legal relief to articulate her claims in court or during a credible or reasonable fear interview, inhibiting her access to a fair immigration process. Pregnant women in detention

³ See *Complaint: U.S. Immigration and Customs Enforcement's Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>; Kate Morrissey, *Pregnant Woman Fears Miscarriage in Immigration Detention*, THE SAN DIEGO UNION-TRIBUNE, Aug. 21 2017, available at <http://www.sandiegouniontribune.com/news/immigration/sd-me-otay-pregnancy-20170825-story.html>; Roque Planas, *Two Women Say They Lost Pregnancies in Immigrant Detention Since July*, HUFFPOST, Sep. 27, 2017, available at https://www.huffingtonpost.com/entry/immigrant-detention-pregnancy_us_59cbace4e4b05063fe0e211b; Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention*, Mar. 17, 2009, available at <https://www.hrw.org/report/2009/03/17/detained-and-dismissed/womens-struggles-obtain-health-care-united-states>; Yamileth Garcia, *Immigration Detention is Inhumane. But for Pregnant Women, It's Trauma*, THE GUARDIAN, Jul. 27, 2015, available at <https://www.theguardian.com/commentisfree/2015/jul/27/immigration-detention-pregnant-women-conditions>

⁴ See *Complaint: U.S. Immigration and Customs Enforcement's Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>

⁵ Katie Traverso and Michael Kaufman, *Shackle a Pregnant Woman, Risk a Foreseeable Tragedy*, ACLU, Jun. 18, 2015, available at <https://www.aclunc.org/blog/shackle-pregnant-woman-risk-foreseeable-tragedy>

⁶ See *Complaint: U.S. Immigration and Customs Enforcement's Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>

⁷ Roque Planas, *Two Women Say They Lost Pregnancies in Immigrant Detention Since July*, HUFFPOST, Sep. 28, 2017, available at https://www.huffingtonpost.com/entry/immigrant-detention-pregnancy_us_59cbace4e4b05063fe0e211b

⁸ American Academy of Pediatrics, American College of Obstetricians and Gynecologists, and American Academy of Family Physicians, *Letter to ICE Acting Director Homan*, Mar. 30, 2018, available at http://www.aifa.org/infonet/medic-professionals-against-ice-detention-policies?utm_source=aifa.org&utm_medium=InfoNet%20Search

⁹ See, e.g. *Complaint: U.S. Immigration and Customs Enforcement's Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>; Yamileth Garcia, *Immigration Detention is Inhumane. But for Pregnant Women, It's Trauma*, THE GUARDIAN, Jul. 27, 2015, available at <https://www.theguardian.com/commentisfree/2015/jul/27/immigration-detention-pregnant-women-conditions>

may be so fearful over their health or the health of their pregnancy that they may consider abandoning their case and accepting removal simply to avoid any additional time in detention while pregnant.¹⁰

Detention is neither in a pregnant woman's nor ICE's best interest, given that the agency clearly does not have the medical staffing needed to serve pregnant women. By allowing a pregnant woman to continue her immigration, asylum, or removal proceedings from outside detention, she will be able to access the care that she needs while saving the government and U.S. taxpayer the cost of a detention bed and the additional medical services she requires while in custody. Should ICE seek to mitigate any flight risk through the use of detention, the agency can instead turn to far more cost-effective alternatives to detention programs, although the agency should continue to refrain from requiring pregnant women to wear an ankle monitor.

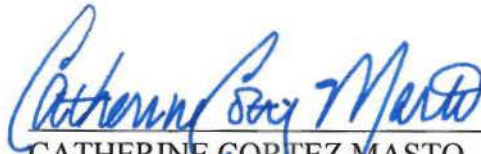
We strongly believe that, absent extraordinary circumstances, ICE should not be in the business of detaining pregnant women, and that stronger oversight is needed to understand ICE's practices and policies concerning their detention. Such policies can have life or death consequences for an estimated 35 women who were in ICE custody as of March 20, 2018, more than 500 women who were detained since the issuance of the December 2017 directive, and those who will follow.¹¹

Thank you for your consideration of our request and for all of your efforts on FY19 appropriations.

Sincerely,



KAMALA D. HARRIS
United States Senator



CATHERINE CORTEZ MASTO
United States Senator



EDWARD J. MARKEY
United States Senator



SHELDON WHITEHOUSE
United States Senator

¹⁰ Women's Refugee Commission, *Prison for Survivors: the Detention of Women Seeking Asylum in the United States*, Oct. 2017, available at

<https://www.womensrefugeecommission.org/rights/resources/document/download/1528>

¹¹ Abigail Abrams, *ICE Will Now Detain Pregnant Women Because of President Trump's Executive Order*, TIME, Mar. 30, 2018, available at <http://time.com/5221737/ice-detain-pregnant-immigrants-donald-trump/>



MAZIE K. HIRONO
United States Senator



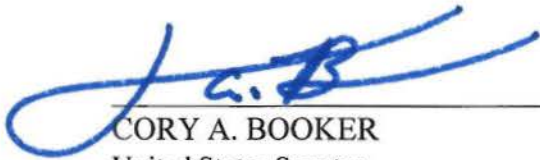
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