

United States Senate

WASHINGTON, DC 20510

April 5, 2018

The Honorable Thomas Homan
Acting Director
Immigration and Customs Enforcement
500 12th Street SW
Washington, D.C. 20563

Dear Acting Director Homan:

We write today to express our profound opposition to the recently announced decision to end the policy of presumptive release for pregnant women in immigration detention. In the vast majority of cases, the detention of a pregnant woman suspected of a civil immigration offense is wholly inappropriate. We strongly urge Immigration and Customs Enforcement (ICE) to immediately reverse this decision and reinstate the previous policy for pregnant women.

Despite the policy being put in place months earlier, on March 29, 2018, ICE announced in an email to Congressional offices that it had ended the presumption of release for all pregnant detainees. ICE's previous policy was sufficient to detain any undocumented pregnant woman who may pose a threat to herself or the public safety.¹ The former policy, in place for almost two years, reflected the reality that the detention of pregnant women is cruel, risky, and therefore almost never justified. More troubling, the announcement of this new policy contained no factual, statistical, or policy-based evidence regarding the need to grant ICE agents increased discretion to detain pregnant women. Indeed, the only justification for the change in policy is the desire to "better align" with an Executive Order 13768, "Enhancing Public Safety in the Interior of the United States."²

Additionally, this dramatic shift in policy is particularly reckless given evidence that ICE is not able to meet the current medical, mental health, and nutritional needs of pregnant women currently in immigration detention.³ Despite ICE's current policy that "a pregnant [woman] in custody shall have access to pregnancy services including routine or specialized prenatal care, pregnancy testing, comprehensive counseling and assistance, postpartum follow up, lactation

¹ Memorandum, *Identification and Monitoring of Pregnant Detainees*, U.S. Immigration and Customs Enforcement (Aug. 15, 2016), available at https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf.

² Exec. Order No. 13768, 82 F.R. 8799 (Jan. 25, 2017).

³ See Greg Kaufman, *Pregnant Immigrants Say They've Been Denied Medical Care in Detention Centers*, THE NATION (Oct. 12, 2017), <https://www.thenation.com/article/pregnant-immigrants-say-theyve-been-denied-medical-care-in-detention-centers/>; Letter from the American Civil Liberties Union, American Immigration Council, American Immigration Lawyers Association, et al., to the Officer for Civil Rights and Civil Liberties and the Inspector General of the U.S. Department of Homeland Security, (Nov. 13, 2017), available at https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_increasing_numbers_of_pregnant_women_facing_harm_in_detention.pdf.

services and abortion services,”⁴ there are multiple reports that pregnant women have been denied access to or received inadequate medical care while in detention. In one instance, a woman from El Salvador who was four months pregnant at the time of her detention, reported experiencing heavy bleeding and pain to detention officers, yet was not transported to a hospital for more than twenty-four hours, despite her repeated requests for medical attention.⁵ When she was finally taken to the hospital, doctors confirmed that she had miscarried. In another case, a woman who was 3 months pregnant was subjected to a 23 hour van ride with minimal access to food or bathroom facilities, and was hospitalized for exhaustion and dehydration following the trip.⁶

In the absence of extraordinarily compelling evidence that the detention of a pregnant woman is necessary because she is a threat to herself or others, or is a threat to public safety or national security, the civil detention of an expectant mother for potential immigration offenses is never justified. In addition to the physical and psychological burdens attendant to any pregnancy, pregnant women in immigration detention face additional stresses related to their physical confinement, unreliable access to adequate healthcare, social isolation, and the uncertainty of their immigration status.⁷ Cumulatively, these stressors may create serious health risks, including miscarriage and fetal death. Given the gravity of these potential risks, and the availability of alternatives to detention, such as periodic check-ins with ICE Field Offices, there is no plausible justification for the need to grant ICE agents increased discretion to detain pregnant women.

Furthermore, even if ICE had the capacity to provide sufficient medical, psychological, nutritional, and social support for pregnant detainees, the costs of such care are not justified by the negligible benefits derived from keeping pregnant woman in detention. The increased costs of detaining more pregnant women, which include potential liability if they receive inadequate care, are disproportionate to the expected reduction in risk. Therefore, ICE’s decision to reverse the policy of presumptive release is not only inhumane and not evidence-based, but also fiscally irresponsible.

We strongly believe that there are no credible policy or fiscal considerations that merit reversing the presumption that pregnant women should not be detained. ICE’s policies should reflect the fact that, except in the most extreme circumstances, the potential harms and risks of detaining pregnant women for civil immigration violations are not justified. Given the grave impact that this decision will potentially have on the health of expectant mothers, and our

⁴ *Performance Based National Detention Standards* 322, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (2011), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

⁵ *Id* at 8-9.

⁶ *Id* at 11-12.

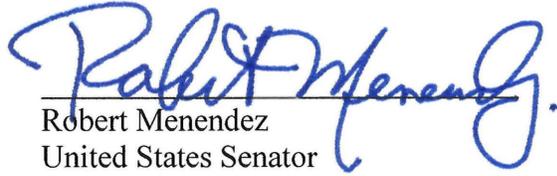
⁷ See Rachel Roth, *Obstructing Justice: Prisons as Barriers to Medical Care for Pregnant Women*, 18 UCLA Women's L.J. 79, 94-106 (2010); Letter from the American Civil Liberties Union, American Immigration Council, American Immigration Lawyers Association, et al., to the Officer for Civil Rights and Civil Liberties and the Inspector General of the U.S. Department of Homeland Security at 2, (Nov. 13, 2017), *available at* https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_increasing_numbers_of_pregnant_women_facing_harm_in_detention.pdf.

country's moral standing in the international community, we strongly urge ICE to reverse its decision and reinstate a policy of presumptive release for all pregnant women.

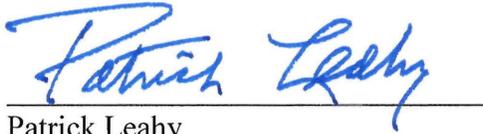
Sincerely,



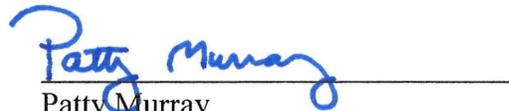
Catherine Cortez Masto
United States Senator



Robert Menendez
United States Senator



Patrick Leahy
United States Senator



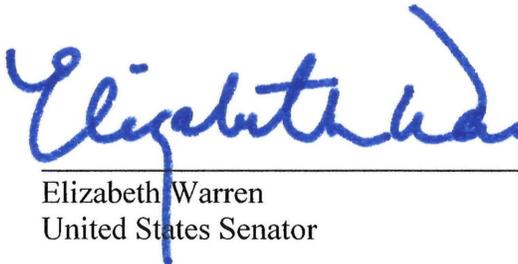
Patty Murray
United States Senator



Mazie Hirono
United States Senator



Richard Blumenthal
United States Senator



Elizabeth Warren
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Kamala D. Harris
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