



April 8, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General
245 Murray Lane SW
Washington, DC 20528-0305

Dear Inspector General Cuffari,

We write to urge the Department of Homeland Security (DHS) Office of Inspector General (OIG) to conduct an investigation into recent reports that U.S. Customs and Border Protection (CBP) personnel are severely mistreating pregnant people in their custody. This conduct is alarming enough on its own, but as the global pandemic continues to spread, it represents an even more serious threat. Given the quantity and extremely disturbing nature of these reports, combined with CBP's failures to respond to congressional inquiries into this matter, we write to strongly encourage you to open an investigation into CBP's treatment of pregnant people as soon as possible.

We have received reports regarding a woman who was eight months pregnant when she arrived at the southern border in mid-February. The woman was ill with the flu, coughing, and experiencing intense pain in her womb at the time. Border Patrol arrested the woman and her family and she begged them to let her seek medical attention. Instead of sending her to a hospital, Border Patrol transported her to the Chula Vista Border Patrol station. As the woman's coughing and pain intensified, the officers told her to sit down. Shortly after arriving to the Chula Vista Border Patrol Station, she gave birth, standing up, delivering the baby into her pants, while holding onto the edge of a garbage can for support. Only then was she *finally* transferred to a hospital. She was returned to the station with her newborn two days later, where Border Patrol forced them to spend another night and refused to provide a blanket for the baby. She was not allowed to shower at the hospital or at the station after giving birth and before finally being released from custody.¹

Nobody should be treated this way. But sadly, this woman is not the only one to have experienced inexcusable treatment at CBP's hands. Below, we highlight some of the most pressing issues that we believe an investigation should address: delaying or denying medical treatment, extended periods of detention in inadequate facilities, the use of excessive force and invasive searches, and the use of shackles and other restraints on pregnant people.

Denying and delaying medical treatment

The abhorrent incident described above is not the first time that CBP has reportedly denied or delayed medical care for pregnant detainees who clearly needed it. DHS's Office for Civil Rights and Civil Liberties (CRCL) received a complaint in August, 2018 about a woman who was three-

¹ Letter from ACLU & Jewish Family Service to Joseph V. Cuffari, Department of Homeland Security Office of Inspector General, Re: U.S. Border Patrol's Abuse and Mistreatment of a Woman at the Chula Vista Border Patrol Station, April 8, 2020, at 3.

months pregnant who was held in CBP custody for several days. When she started bleeding, she repeatedly asked for medical attention. Instead, one CBP officer yelled at her and accused her of lying and another just gave her sanitary pads. As she repeated her exhortations, stating that she was afraid she would lose her pregnancy, the officers just gave her more pads. Unsurprisingly but tragically, her fears came true—she miscarried.²

The American Civil Liberties Union (ACLU) has also interviewed a pregnant woman who fled Honduras to escape persecution on the basis of her HIV-positive status. When she arrived at the border, CBP personnel confiscated her HIV medication and prenatal vitamins and detained her. That night, she experienced heavy vaginal bleeding. As she cried out in pain and begged for medical attention, the Border Patrol agents let her bleed alone in her cell, with one agent reportedly responding to her cries: “Don’t be so dramatic.”³

CRCL received a complaint from June, 2019 regarding a pregnant minor who was experiencing menstrual spotting when she was arrested by a Border Patrol agent. Instead of taking her to seek medical treatment, the agent took her to a processing center, subjected her to an hour-long interview, and then delayed taking her to the hospital because the person charged with accompanying her forgot some of her paperwork. When she did finally get medical attention, the doctor explained that she was, unsurprisingly, under a lot of stress and needed rest. Instead, Border Patrol made her sleep on a hard surface with a foil blanket.⁴

Note that the ACLU and CRCL are not the only ones who have received reports of CBP denying or delaying medical treatment. In July, 2019, during a trip to the southern border, Senator Wyden himself witnessed CBP delay medical treatment for a pregnant asylum-seeker who was in distress “due to complications with her pregnancy and [who] required immediate medical attention.”⁵ A year prior, BuzzFeed interviewed four women who described “being ignored when they were obviously miscarrying,” including a 23-year-old asylum seeker who started bleeding profusely while in detention, only to be told that the facility “was not a hospital and they weren’t doctors. They wouldn’t look out for me.” After eight days in detention, and still bleeding, she made the impossible decision to give up her asylum claim. She returned to El Salvador, no longer pregnant.⁶ These reports are made all the more alarming in light of reporting by the New

² Letter from James Holzer, Deputy Chief FOIA Officer, Department of Homeland Security, to ACLU, Final Response to FOIA Request, Feb. 13, 2020, at 10, available at <https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf>; see also *ACLU Seeks Review of Treatment of Pregnant Women Detained by Border Patrol*, Fox5 San Diego, Jan. 23, 2020, available at <https://fox5sandiego.com/news/aclu-requests-review-of-treatment-of-pregnant-women-at-border-patrol-facilities/> (noting that CBP had not responded to a request for comment regarding the ACLU’s administrative complaint).

³ 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 Abuse and Mistreatment of Detained Pregnant People—Addendum to Complaint of January 22, 2020, March 4, 2020, at 14, available at <https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf>.

⁴ Letter from James Holzer, *supra* n. 1 at 19.

⁵ Letter from Sen. Wyden to Mark A. Morgan, Acting Commission, U.S. Customs and Border Protection, and Matthew T. Albence, Acting Director, U.S. Immigration and Customs Enforcement Feb. 3, 2020, available at <https://www.wyden.senate.gov/imo/media/doc/020320%20Wyden%20Letter%20to%20CBP%20and%20ICE%20on%20Pregnant%20Migrants.pdf>.

⁶ Ema O’Connor & 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>.

York Times that CBP writ large is compromising the health and safety of detained migrants, including an account of a woman who gave birth prematurely “and was later forced to stay with the baby in a ‘dirty hold room,’” and another of a woman who experienced “heavily vaginal bleeding after a sexual assault and was not provided any medical attention.”⁷

We only know of these recent instances because of the diligent work of non-profits, journalists, and lawmakers who have taken the time to interview detained people and send Freedom of Information Act (FOIA) requests to DHS. We strongly suspect that these are not the only instances where CBP personnel have improperly delayed or denied medical treatment for pregnant people. But even if they were, these reports alone warrant review of CBP’s policies, facilities, and accountability measures.

Prolonged detention in inadequate facilities

The reports that CRCL and the ACLU have reviewed illuminate a disturbing pattern of CBP detaining pregnant people for extended periods of time—for anywhere from ten to eighteen days. As an initial matter, prolonged detentions violate several laws and CBP policies. CBP’s National Standards on Transportation, Escort, Detention and Search (TEDS) sets a cap of 72 hours for detention in CBP facilities. The U.S. Border Patrol’s policy sets a 12-hour limit on detention in the agency’s “short-term” hold rooms.⁸

These caps exist for good reason. CBP and Border Patrol facilities are designed to hold people for short periods of time during processing. They are not meant to house people for long periods, especially not people with unique medical needs, such as pregnant individuals. These facilities often lack bedding, showers, and staff with adequate training to respond to the health needs that develop during prolonged detention.

Even more alarming, however, are the accounts from pregnant people that these facilities are not just ill-suited for prolonged detention, but that they are inadequate even for the periods of time contemplated in agency policies. One woman recounted only being offered spoiled or cold food, drinking water that had a burning smell, and not having access to hygiene products like a toothbrush and toothpaste.⁹ Multiple pregnant individuals reported being detained in crowded conditions, increasing the likelihood that they would be exposed to infectious disease or even accidentally kicked or stepped on.¹⁰ These accounts follow public reporting of dangerous overcrowding in CBP facilities, including adults forced to stand for days due to lack of space, as

⁷ Sheri Fink & Caitlin Dickerson, *Border Patrol Facilities Put Detainees with Medical Conditions at Risk*, N.Y. Times, March 5, 2019, available at <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>.

⁸ U.S. CUSTOMS AND BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 4.1 (October 2015) [hereinafter “TEDS”], available at <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>; U.S. BORDER PATROL, DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY, Reference No. 08-11267, at § 6.2.1 (Jan. 31, 2008), available at https://foiarr.cbp.gov/docs/Policies_and_Procedures/2011/200842354_378/1104271006_Hold_Room_Custody_Directive_Reading_Room.pdf.

⁹ 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 7, available at <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>.

¹⁰ *Id.* at 7-8; Letter from James Holzer, *supra* n. 1 at 17.

well as adults and children being held for extended periods of time “with no access to soap, toothpaste, or places to wash their hands or shower.”¹¹

The CRCL complaints also reveal that CBP has been improperly detaining pregnant *minors* for extended periods of time. In June 2019, CRCL was made aware of at least two of these cases: in the first, a 17-year-old who was three months pregnant was held in CBP custody for 12 days, during which time she was held in a small cell with 27 other people.¹² In the second, a minor who was seven-months pregnant was held in DHS custody for 11 days.¹³

Minors are protected by heightened standards against prolonged detention. The *Flores* settlement agreement requires CBP to transfer minors out of its custody to appropriate shelters no longer than 72 hours after they are apprehended.¹⁴ Minors who are seeking asylum from non-contiguous countries must also be transferred to the Department of Health and Human Services within 48 hours of apprehension per the Trafficking Victims Protection Act.¹⁵ These rules apply to *all* minors and we are disturbed to learn that there are any instances of children being detained for extended periods of time in facilities that are not designed to house them in violation of at least two legal standards.

Minors who are pregnant have unique medical needs that make this illegal detention even more dangerous. Pregnant minors face increased risks of “high blood pressure, anemia, premature birth, having low birth weight babies and experiencing postpartum depression.”¹⁶ And that is before factoring in both the often arduous journey that asylum-seekers arriving at the southern border have faced *or* the risks that accrue from delayed or denied medical care, a very real possibility for people held in CBP detention, as described above.

Again, these incidents resemble accounts that the news media have reported on, strongly suggesting that there is a pattern of misconduct at CBP. Last summer, CNN reported on a pregnant teenager and nine-month old child who were held in a Border Patrol station in New York for *ten days*—a situation that even the Border Patrol officials conceded was not safe, noting that the station is “not meant to hold babies [...] Imagine, it’s concrete.”¹⁷ The Associated Press has also reported that unaccompanied pregnant minors arriving at the border “don’t get medical consideration while they’re being crammed into U.S. facilities” where they lack access to safe, hygienic bedding and adequate food.”¹⁸

¹¹ Madeleine Joung, *What is Happening at Migrant Detention Centers? Here’s What to Know*, Time, July 12, 2019, available at <https://time.com/5623148/migrant-detention-centers-conditions/>.

¹² Letter from James Holzer, *supra* n. 1 at 18.

¹³ *Id.*

¹⁴ Stipulated Settlement Agreement at 7, *Flores v. Reno*, No. CV 85-4544-RJK (Px)(C.D. Cal. Jan. 17, 1997).

¹⁵ 8 U.S.C. § 1232 (a)(4).

¹⁶ MAYO CLINIC, *TEENAGE PREGNANCY: HELPING YOUR TEEN COPE*, Aug. 6, 2019, available at <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teen-pregnancy/art-20048124>

¹⁷ Geneva Sands, *Pregnant Teen and Baby Held in Border Patrol Custody for More than a Week*, CNN, June 17, 2019, available at <https://www.cnn.com/2019/06/17/politics/teenager-baby-border-patrol-custody-northern-border/index.html>.

¹⁸ Astrid Galvan, *Pregnant Teens Especially Vulnerable in Border Centers*, Associated Press, July 4, 2019, available at <https://apnews.com/3defe7a843a14d12845227b5e6f930d0>.

This disturbing trend calls out for independent review of CBP policies and practices. Given the unique risks that pregnant people arriving at the border face, we believe that CBP must do more to ensure that their medical needs are met and legal rights respected.

Excessive force, invasive searches, and unprofessional behavior

We also have serious concerns that some CBP personnel are not conducting themselves in an appropriate and professional manner when apprehending or searching pregnant people, needlessly risking migrants' health and wellness .

A number of pregnant people have reported excessive force by CBP officials, including a woman who was elbowed in the stomach and another who was repeatedly slammed into a chain-link fence.¹⁹ Obviously, this behavior is unacceptable under any circumstances—irrespective of an individual's medical status. But subjecting pregnant detainees to such physical abuse and grossly unprofessional conduct poses unique medical risks that only exacerbates the need for independent oversight of CBP conduct.

The CRCL complaints include multiple incidents of pregnant people reporting overly invasive searches of their genitalia.²⁰ This follows a pattern that was documented by the Washington Post and the Center for Public Integrity of CBP conducting strip searches of women without even satisfying the low requisite reasonable suspicion threshold, including a report that a CBP officer inserted her finger into the vaginas of at least four women without changing her gloves.²¹

Finally, CRCL received reports of CBP personnel making completely inappropriate statements, including “you are not welcome here” and “nobody gives a f*** who you are.”²² News reports have also documented incidents of verbal harassment when detainees complain about the conditions in CBP facilities, including one mother who recounted CBP personnel yelling at her “You are pigs [...] You came here to ruin my country.”²³

Shackling and restraining pregnant people

Finally, we urge you to review CBP's policies and practices regarding shackling pregnant people. As you know, this practice can have tragic consequences. We have reason to believe that pregnant people are being routinely shackled while being transported between immigration detention facilities.²⁴ 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

¹⁹ Letter from ACLU, *supra* n. 8 at 6.

²⁰ Letter from James Holzer, *supra* n. 1, at 13; 15.

²¹ Susan Ferriss, *In Horrifying Detail, Women Accuse U.S. Customs Officers of Invasive Body Searches*, Washington Post, Aug. 19, 2018, available at https://www.washingtonpost.com/world/national-security/in-horrifying-detail-women-accuse-us-customs-officers-of-invasive-body-searches/2018/08/18/ad7b7d82-9b38-11e8-8d5e-c6c594024954_story.html.

²² Letter from James Holzer, *supra* n. 1 at 8.

²³ Elliott C. McLaughlin, *At Detention Facilities, Migrant Children Plead for Basics: Food, Medicine, Soap and a Bit of Solace*, CNN, June 27, 2019, available at <https://www.cnn.com/2019/06/27/us/migrant-children-detention-stories/index.html>; see also Tina Vasquez, *OB-GYN Says U.S. Marshals Service is Shackling Detained Pregnant Migrants*, REWIRE NEWS, May 14, 2019, available at <https://rewire.news/article/2019/05/14/ob-gyn-says-u-s-marshals-service-is-shackling-detained-pregnant-migrants/>

²⁴ 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>.

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.²⁵ Indeed, prior to 2017, CBP’s policy was to never even detain pregnant individuals barring exceptional circumstances. Since the Trump administration reversed that policy, the rate of miscarriages reported in CBP and U.S. Immigration and Customs Enforcement custody has nearly *doubled*.²⁶

Given how dangerous this practice is, we have previously sought clarification from CBP about its shackling policies and practices but have been repeatedly rebuffed. Following an oversight hearing in March 2019, Senator Blumenthal submitted questions for the record to the Acting Director about CBP’s compliance with the agency’s own internal standards that restrict the circumstances under which CBP can restrain pregnant people. CBP’s TEDS policy forbids the use of restraints or shackles on pregnant people barring some kind of “extraordinary circumstance,” and restraining pregnant detainees in face-down position, on their back, “or in a restraint belt that constricts the area of the pregnancy,” and prohibits CBP personnel from restraining detainees who are in active labor, delivery, or post-delivery recuperation.²⁷

Not only did CBP take nine months to reply to the questions for the record, but their responses were vague and self-contradictory, claiming simultaneously that the practice of shackling pregnant people is rare, that they do not track how often it happens, and that they are in compliance with TEDS. It is simply untenable to maintain all three of those propositions. Fourteen senators sent CBP a follow-up letter, seeking clarification on their data-keeping practices and whether they are, in fact, in compliance with TEDS and requested a response no later than February 28. We have not yet received a response, nor any indication of when we might expect one.

Insufficiency of existing standards

As we have described above, we believe that a number of CBP’s practices violate existing standards, including TEDs, the *Flores* settlement agreement, and the Trafficking Victims Protection Act. However, especially given the serious nature of the reports that CRCL and the ACLU have been receiving, we are not convinced that CBP’s existing internal guidelines are sufficient to ensure appropriate treatment of pregnant persons by their personnel.

In addition to circumscribing the use of shackles and restraints on pregnant people, TEDS currently also directs CBP personnel to determine whether someone is pregnant before detaining them, to refrain from conducting X-ray searches of pregnant people, and to ensure that pregnant detainees are offered meals and snacks at regular intervals.²⁸ While we believe that these guidelines are helpful, we are concerned that they do not go far enough. They do not address

²⁵ 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>.

²⁶ 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>

²⁷ <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>

²⁸ TEDS at § 4.2; 5.5; 5.6.

standards of medical care nor do they direct CBP personnel to ensure that pregnant people have access to adequate and timely medical care. TEDS only provides guidance on access to hygiene products in a general way and we do not believe that requiring only that CBP make “reasonable efforts” to ensure access to showers is enough, especially given your office’s recent finding that Border Patrol is regularly violating the 72 hour limit on detention in CBP facilities in the Rio Grande Valley.²⁹ Further, while TEDS requires CBP to keep records every time it shackles a pregnant person, it does not address record-keeping or reporting requirements as to the number of pregnant people that CBP detains nor more broadly the standards of care that they receive. We believe more robust reporting requirements are in order.

The reports of CBP mistreating pregnant people that we have reviewed are deeply disturbing. Especially given that CBP has not been forthcoming to members of Congress or the non-profit organizations who work directly with the people detained by CBP, we believe it is especially important for your office to conduct a timely and independent investigation into this matter.

We urge you to conduct a full and comprehensive investigation into CBP’s treatment of pregnant people, including, but not limited to, whether its personnel are complying with existing standards, whether its policies need to be changed or developed further, and whether its oversight and accountability mechanisms are sufficient to ensure compliance from its personnel.

If you have any questions, please contact Charlotte Schwartz in Sen. Blumenthal’s office (Charlotte.Schwartz@blumenthal.senate.gov).

Sincerely,

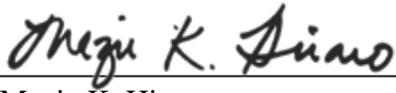


Richard Blumenthal
United States Senator



Edward J. Markey
United States Senator

²⁹ DEP’T OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, MANAGEMENT ALERT – DHS NEEDS TO ADDRESS DANGEROUS OVERCROWDING AND PROLONGED DETENTION OF CHILDREN AND ADULTS IN THE RIO GRANDE VALLEY, at 2–3 (July 2, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf

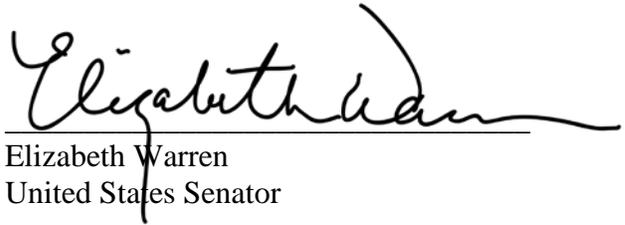


Mazie K. Hirono
United States Senator

/s/ Thomas R. Carper
Thomas R. Carper
United States Senator



Richard J. Durbin
United States Senator



Elizabeth Warren
United States Senator



Kamala D. Harris
United States Senator

/s/ Christopher Van Hollen
Christopher Van Hollen
United States Senator



Cory A. Booker
United States Senator



Tammy Duckworth
United States Senator



Kirsten Gillibrand
United States Senator



Amy Klobuchar
United States Senator



Jeffrey A. Merkley
United States Senator