

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”).<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Nongovernmental organizations have also produced several reports regarding serious

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<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> *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%20Mistreating%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.<sup>4</sup>


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.<sup>5</sup> 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.<sup>6</sup> 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](mailto:David_Stoopler@judiciary-dem.senate.gov)) and Alexander Nabavi-Noori ([Xander\\_Nabavi-Noori@judiciary-dem.senate.gov](mailto: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

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> *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").



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CHRIS VAN HOLLEN  
United States Senate



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ALEX PADILLA  
United States Senate



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RICHARD J. DURBIN  
United States Senate



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TAMMY DUCKWORTH  
United States Senate



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ELIZABETH WARREN  
United States Senate



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DIANNE FEINSTEIN  
United States Senate



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PATTY MURRAY  
United States Senate