

# United States Senate

WASHINGTON, DC 20510

December 16, 2022

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
2801 Nebraska Avenue, NW  
Washington, DC 20528

The Honorable Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement  
500 12th Street SW  
Washington, D.C. 20536

The Honorable Troy A. Miller  
Acting Commissioner  
U.S. Customs and Border Protection  
U.S. Department of Homeland Security  
1300 Pennsylvania Avenue NW Washington, D.C. 20229

Dear Secretary Mayorkas, Acting Director Johnson, and Acting Commissioner Miller,

We are writing to express concern that Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) personnel continually and regularly ignore policies for ensuring that people in custody are treated humanely, especially policies related to the shackling of people who are pregnant and post-partum.

Over a year ago, disturbing images and videos showed border patrol agents on horses using reins against Black migrants at the border in Del Rio, Texas. This incident reminded many of our country's dark history of treatment towards enslaved Black people and highlighted longstanding concerns regarding the disparate treatment of Black migrants by immigration enforcement officials. In response, several of us sent President Biden a letter urging the administration to end Title 42 expulsions, an immigration control policy purportedly used to protect public health. We also asked the president to take steps to address the disparate treatment of Black migrants in our asylum process and requested a holistic review of the Department of Homeland Security, in concert with the Department of Justice's Executive Office for Immigration Review (EOIR), policies and practices to identify the disparate treatment of Black migrants by our immigration system.

Since then, the conditions for Black migrants attempting to exercise their legal and human right to seek asylum have only worsened, and so have the conditions in immigration detention centers. Although Black migrants make up only six percent of the people in ICE detention centers, they

represent 28 percent of abuse-related reports.<sup>1</sup> Despite the administration's announcement in May 2022 that it would end the use of Title 42 to prevent migrants from seeking asylum, CBP continued Title 42 expulsions and recently announced an expansion of Title 42 for certain foreign nationals at the border. Thankfully, in November 2022, the United States District Court for the District of Columbia ruled that the Biden Administration must immediately end its use of Title 42 to expel migrants at the southern border after they have entered the United States.

Despite the planned end of Title 42 expulsions in December 2022, people subject to Title 42 removals continue to feel its consequences. Many people removed under the policy face violence and persecution abroad after their removal. A Human Rights First report documented at least 9,886 reports of kidnapping, torture, rape, and other violent attacks on people blocked in or expelled to Mexico under the administration's Title 42 policy as of March 2022.<sup>2</sup> The report also concluded that Title 42 expulsions continue to have a disparate racial impact on Black asylum seekers and migrants, who face widespread anti-Black violence and discrimination in Mexico where they usually end up or back in very country that they initially fled.<sup>3</sup> This policy is the driving force behind the more than 25,000 migrants sent to Haiti since the beginning of the Biden-Harris administration, without first determining standing for an asylum claim.

Black migrants suffer from disparate treatment, discrimination, and racism at every phase of the immigration system - including when they are being deported to their country of origin, most times without being given the chance to seek asylum. A September 2022 Amnesty International Report found that Haitians removed under Title 42 were detained in ways that "amount to ill-treatment and in some cases torture, either to coerce them to give up their claims or to deter other asylum seekers."<sup>4</sup> One psychologist estimated that two-thirds of families removed to Haiti were shackled or chained at some point during the removal process.<sup>5</sup> Multiple Haitian migrants interviewed for the report said they were shackled either while they were pregnant or breastfeeding.<sup>6</sup> One woman who was nine months pregnant was shackled by CBP agents and carried onto a plane to be removed.<sup>7</sup>

The treatment described in these reports is disturbing, horrific, and un-American. It also appears to conflict with CBP and ICE's own guidelines on shackling and the use of chains during deportation. CBP's standards require that restraints during detention are used "in a manner that is safe, secure, humane, and professional."<sup>8</sup> Additionally, restraints cannot be used "in a punitive

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<sup>1</sup>Timantha Goff et al., *Uncovering the Truth, Violence and Abuse Against Black Migrants in Immigration Detention* (Oct. 2022), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/6358c4c94b39565ec808f049/1666761932698/Uncovering+the+Truth.pdf>.

<sup>2</sup>"Two Years of Suffering: Biden Administration Continues Use of Discredited Title 42 Order to Flout Refugee Protection," HUMAN RIGHTS FIRST (Mar. 2022) <https://humanrightsfirst.org/library/markin-two-years-of-illegal-inhumane-title-42-expulsions-nearly-10000-violent-attacks-on-asylum-seekers-and-migrants/>.

<sup>3</sup> *Id.*

<sup>4</sup> 'They Did Not Treat Us Like People,' Race and Migration-Related Torture and Other Ill-Treatment of Haitians Seeking Safety in the U.S.A.," AMNESTY INTERNATIONAL (Sep. 2022) <https://www.amnesty.org/en/documents/amr36/5973/2022/en/>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> National Standards on Transport, Escort, Detention, and Search, U.S. Customs and Border Protection (2015).

manner or in a manner than causes detainees undue pain.”<sup>9</sup> According to ICE’s National Detention Standards, the use of restraints on migrants and asylum seekers is permitted in limited circumstances, but officers must exercise “sound correctional judgment when applying restraints.”<sup>10</sup> According to ICE’s National Detainee Handbook, officers may only use force “after all reasonable efforts to otherwise resolve a situation have failed”<sup>a</sup> and “physical force or restraining devices will not be used as punishment.”<sup>11</sup> International law is clear that countries may not shackle or handcuff pregnant people or people immediately after childbirth.<sup>12</sup>

We continue to believe that a holistic review of the disparate treatment of Black migrants throughout our immigration system is both necessary and urgent. We also respectfully request answers to the following questions within two weeks of the date of this letter:

1. Are ICE and CBP tracking the use of shackling, and if so, how?
2. How many people subject to Title 42 expulsions have been shackled or put into handcuffs during their expulsion? Of these people, how many were pregnant or breastfeeding?
3. When and for how long is it customary for CBP to shackle a person during removal proceedings and under what circumstances? Please provide an average length of time that a person may be shackled, if possible.
4. Is it ICE or CBP’s policy or practice to restrain people using shackles or handcuffs on removal or deportation flights? What are the unique characteristics of flights that lead to the reported use of additional restraining measures?
5. What is the total number of complaints that have been filed since 2020 related to the use of shackles, cuffs, or other restraining devices, with DHS or ICE, including the DHS Office of Inspector General, the DHS Office for Civil Rights and Civil Liberties, the Office of the Immigration Detention Ombudsman, the ICE Office of Professional Responsibility, or the ICE Enforcement and Removal Operations: Custody Management Division?
6. Have any ICE or CBP employees been disciplined, suspended, or terminated for improper shackling under ICE or CBP policy? Please provide the date of the action and the employee’s title/position.
7. Does DHS currently track data on race and/or ethnicity within the immigration system? And if not, how does DHS analyze whether or not policies are implemented in a way that does not have a disparate treatment on Black migrants?

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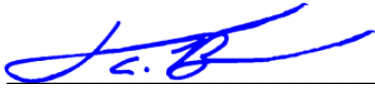
<sup>9</sup> *Id.*

<sup>10</sup> National Detention Standards, U.S. Customs and Immigration Enforcement (2019).

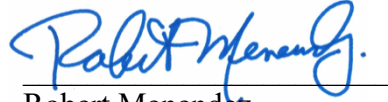
<sup>11</sup> National Detainee Handbook, U.S. Customs and Immigration Enforcement (2019)

<sup>12</sup> UN General Assembly (UNGA), Resolution adopted by the General Assembly on 21 December 2010, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc. A/RES/65/229, Rule 24.

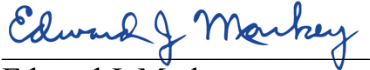
Sincerely,



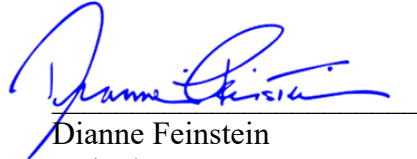
Cory A. Booker  
United States Senator



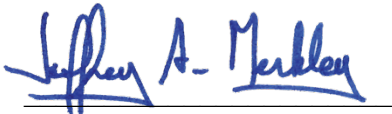
Robert Menendez  
United States Senator



Edward J. Markey  
United States Senator



Dianne Feinstein  
United States Senator




Jeffrey A. Merkley  
United States Senator



Ron Wyden  
United States Senator



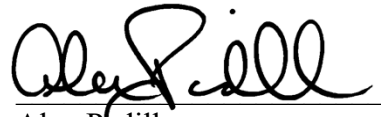
Elizabeth Warren  
United States Senator



Benjamin L. Cardin  
United States Senator



Bernard Sanders  
United States Senator



Alex Padilla  
United States Senator