

# United States Senate

WASHINGTON, DC 20510

April 8, 2019

Ronald Vitiello  
Acting Director  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street SW  
Washington, D.C. 20563

The Honorable Kevin K. McAleenan  
Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue NW  
Washington, D.C. 20229

Dear Acting Director Vitiello and Commissioner McAleenan:

One year ago, several of us wrote to Immigration and Customs Enforcement (ICE) to express our profound opposition to the decision to end the policy of presumptive release for pregnant women in immigration detention. As the signatories to that letter stated then, in the vast majority of cases, the detention of a pregnant woman suspected of a civil immigration offense is wholly inappropriate and ICE should reverse this decision. It is with the deepest sadness and frustration that we learned that in February, a pregnant woman in ICE custody, after spending time in Customs and Border Protection (CBP) custody, went into premature labor and delivered a stillborn baby.<sup>1</sup> It is also disturbing to learn that in the past two fiscal years, as many as 28 women may have experienced miscarriages in ICE custody, with a notable increase in Fiscal Year 2018 over the previous year.<sup>2</sup>

We understand that, according to a joint Department of Homeland Security (DHS) press release issued about the February 22<sup>nd</sup> stillbirth, the woman in custody had received two medical screenings and was being processed for release.<sup>3</sup> However, she is far from the only pregnant woman who has experienced complications, inadequate treatment, or miscarriages while in DHS custody. There are multiple reports of pregnant women having been denied access to medical care or receiving inadequate medical care while in ICE detention.<sup>4</sup>

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<sup>1</sup> U.S. Immigration and Customs Enforcement, *Joint Statement from ICE and CBP on Stillbirth in Custody* (February 25, 2019), <https://www.ice.gov/news/releases/joint-statement-ice-and-cbp-stillbirth-custody>.

<sup>2</sup> Daniel González, *28 women may have miscarried in ICE custody over the past 2 years*, USA TODAY (February 28, 2019), <https://www.usatoday.com/story/news/nation/2019/02/27/28-women-may-have-miscarried-ice-custody-past-2-years/3003310002/>.

<sup>3</sup> *Joint Statement*, *supra* note 1.

<sup>4</sup> ACLU et. al, *U.S. Immigration and Customs Enforcement's Detention and Treatment of Pregnant Women* (November 13, 2017), <https://www.aclu.org/legal-document/pregnant-women-ice-custody-complaint-dhs-office-civil-rights-and-civil-liberties-and>.

There have also been reports of pregnant women being mistreated in CBP custody. In addition to receiving inadequate medical care, women report having been shackled around the stomach while being transported and mistreated physically and psychologically by ICE and CBP agents.<sup>5</sup> Women have shared stories of being ignored during their miscarriages by agents who refused to respond to the medical emergencies these women were facing.<sup>6</sup>

Such disturbing incidents underscore the need to return to ICE's previous policy of presumptive release for all pregnant women.<sup>7</sup> ICE does not and cannot meet the medical, mental health, and nutritional needs of pregnant women in immigration detention; as three major medical groups have stated, "the conditions in DHS facilities are not appropriate for pregnant women or children."<sup>8</sup> Given the many potential risks that pregnant women face in custody, and the availability of a wide spectrum of effective alternatives to detention, there is no plausible justification for regular detention of pregnant women.

These incidents also raise questions of how pregnant women are treated in CBP custody. CBP has recently seen four deaths in custody in as many months, two of which were children.<sup>9</sup> While these tragedies prompted CBP to institute secondary medical checks of all children and increase medical care available to children and families, it is unclear whether sufficient medical care is available for pregnant women in CBP custody.

In the absence of 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. The statistics released in the wake of February's tragic event demonstrate the grave impact that ICE's decision to end presumptive release has had on expectant mothers and our country's moral standing. We cannot stand by while women are harmed by this administration's inhumane policies. We strongly urge ICE to reverse its decision and reinstate a policy of presumptive release for all pregnant women, and CBP to institute strong measures that ensure the timely and appropriate treatment of pregnant women in its custody.

In light of our concerns that pregnant women in ICE and CBP custody are receiving inadequate care, we request that you provide the following documents and responses in writing before April 26<sup>th</sup>:

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<sup>5</sup> 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), <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump#.cuoyYpRWll>.

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

<sup>7</sup> U.S. Immigration and Customs Enforcement, *Identification and Monitoring of Pregnant Detainees* (August 15, 2016), [https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2\\_IdentificationMonitoringPregnantDetainees.pdf](https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf).

<sup>8</sup> American Academy of Pediatrics, American College of Obstetricians and Gynecologists, and American Academy of Family Physicians letter to ICE Acting Director Homan (March 30, 2018), available at: <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/ACOG%20AAP%20AAFP%20Letter%20to%20Deputy%20Director%20Homan.PDF>.

<sup>9</sup> Adolfo Flores, *A 40-Year-Old Mexican Immigrant Died in US Custody – The Fourth Death In Recent Months*, BUZZFEED NEWS (March 19, 2019), <https://www.buzzfeednews.com/article/adolfoflores/mexican-immigrant-dies-cbp-custody-el-paso-texas>.

1. ICE has reported that from December 14, 2017 through the end of FY 2018, a total of 1,709 pregnant detainees were booked into ICE custody and from FY 2019 through March 2, 2019, a total of 992 pregnant detainees were booked into ICE custody. Since December 2017, how many pregnant women in ICE custody have been immediately processed for release, such that they spend less than 24 hours in ICE custody?
2. Since December 2017, how many pregnant women have been held in ICE custody for longer than two weeks but less than 30 days?
3. Since December 2017, how many pregnant women have been held in ICE custody for 30 days or more?
4. How many pregnant women are being held in ICE custody as of the date of this letter?
5. How many pregnant women are being held in CBP custody as of the date of this letter?
6. In Fiscal Year 2018, how many pregnant women were held in CBP custody for longer than 72 hours?
7. While in ICE custody, what specialized care do pregnant women receive, and what protocols are in place to ensure that such care is consistently delivered?
  - a. How many ICE facilities have an OB-GYN on staff?
  - b. How often is a pregnant woman referred externally for care?
8. While in CBP custody, what specialized care are pregnant women receiving, and what protocols are in place to ensure that such care is consistently delivered?
  - a. How often is a pregnant woman referred externally for care?
9. Please describe what specialized medical care and other protocols are in place during and after a woman experiences a miscarriage while in ICE custody.
10. Please describe what specialized medical care and other protocols are in place during and after a woman experiences a miscarriage while in CBP custody.
11. Please provide all policy guidance, protocols, procedures, directives, and training materials that ICE uses to inform ICE agents and officials as well as any contracted or sub-contracted staff about detaining pregnant women.
12. Please provide all policy guidance, protocols, procedures, directives, and training materials that CBP uses to inform its agents and officials as well as any contracted or sub-contracted staff about detaining pregnant women.

Thank you in advance for your cooperation with this request.

Sincerely,



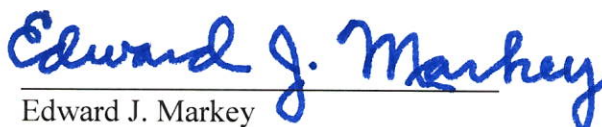
Catherine Cortez Masto  
United States Senator



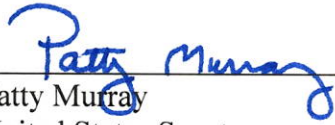
Richard Blumenthal  
United States Senator



Kamala D. Harris  
United States Senator



Edward J. Markey  
United States Senator



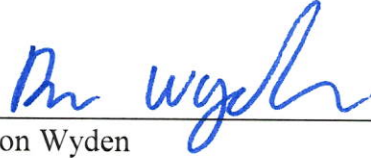
Patty Murray  
United States Senator



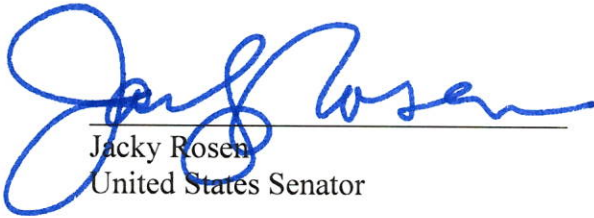
Bernard Sanders  
United States Senator



Kirsten Gillibrand  
United States Senator



Ron Wyden  
United States Senator



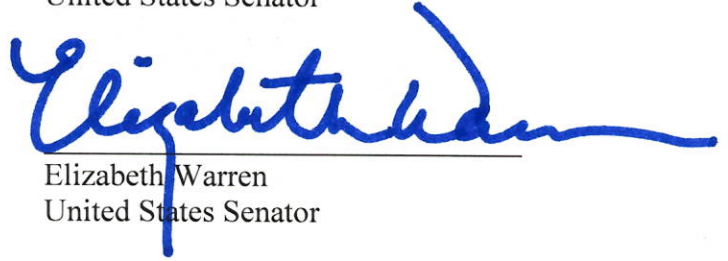
Jacky Rosen  
United States Senator



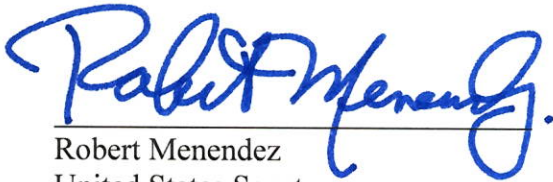
Amy Klobuchar  
United States Senator



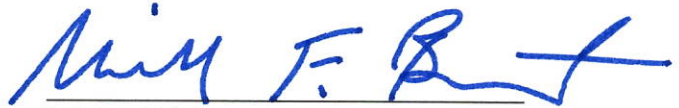
Mazie K. Hirono  
United States Senator



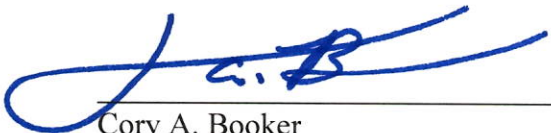
Elizabeth Warren  
United States Senator



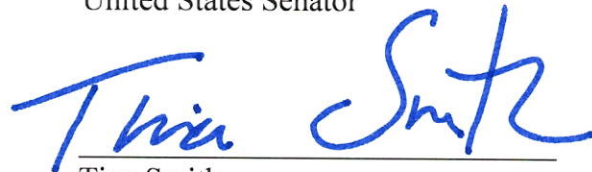
Robert Menendez  
United States Senator



Michael F. Bennet  
United States Senator



Cory A. Booker  
United States Senator



Tina Smith  
United States Senator