

# United States Senate

WASHINGTON, DC 20510

July 13, 2018

Mr. John V. Kelly  
Office of Inspector General  
Department of Homeland Security  
245 Murray Lane SW  
Washington, DC 20528-0305

Dear Inspector General Kelly:

We write to express our serious concerns regarding the treatment of pregnant women in U.S. Immigration and Customs Enforcement (ICE) detention facilities, and urge you to open an investigation into ICE policies and practices related to the conditions and medical treatment of pregnant women in ICE detention facilities.

On December 14, 2017, ICE issued a directive that ended the presumption that pregnant women would not be held in detention facilities.<sup>1</sup> Over the course of FY17, ICE detained nearly 68,000 women, 525 of whom were pregnant.<sup>2</sup> Between January and April of 2017, ICE held 292 pregnant women in detention facilities, which is a 35% increase in the number of detained pregnant women compared to the same period the year before.<sup>3</sup> Additionally, between when the policy change took effect in December 14, 2017 and April 7, 2018, ICE took 590 pregnant women into custody.<sup>4</sup>

Detention is a profoundly traumatic experience for anyone and especially so for pregnant women. Detention can frequently lead to extreme stress, depression, and severe health complications for both a pregnant woman and her child. Pregnant women have repeatedly

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<sup>1</sup> U.S. Immigration and Customs Enforcement, *Directive 11032.3, Identification and Monitoring of Pregnant Detainees*, Dec. 2017, available at [https://www.ice.gov/sites/default/files/documents/Document/2018/11032\\_3\\_PregnantDetainees.pdf](https://www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetainees.pdf)

<sup>2</sup> Roque Planas, *Two Women Say They Lost Pregnancies While In Immigrant Detention Since July*, HUFFINGTON POST, Sept. 27, 2017, available at [https://www.huffingtonpost.com/entry/immigrant-detention-pregnancy\\_us\\_59cbace4e4b05063fe0e211b](https://www.huffingtonpost.com/entry/immigrant-detention-pregnancy_us_59cbace4e4b05063fe0e211b)

<sup>3</sup> Eleanor Sheehan, *ICE Continues to Violate Its Own Policy and Detain Undocumented Pregnant Women*, SPLINTER NEWS, Sep. 27, 2017, available at <https://splinternews.com/ice-continues-to-violate-its-own-policy-and-detain-undo-1818829222>

<sup>4</sup> Ema O'Connor, Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention and Didn't Get the Care They Need*, BUZZFEED, Jul. 9, 2018, available at [https://www.buzzfeed.com/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump?utm\\_term=.kkV1zMJk5#.beEKW2QPL](https://www.buzzfeed.com/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump?utm_term=.kkV1zMJk5#.beEKW2QPL)

described the fear, uncertainty, and exhaustion they experience as a result of being detained.<sup>5</sup> Detained pregnant women have stated they experience routine mistreatment, including malnutrition, inadequate bedding, insufficient access to basic medical care, lack of privacy regarding their medical history, and even shackling during transportation for medical care. The shackling of pregnant women is an inhumane practice that is extremely harmful—the use of restraints on a pregnant woman is not only detrimental to her physical health, but also her mental health. The stress and strain of shackling can induce perinatal mood disorders, including anxiety and depression, which have a disproportionate impact on women of color.<sup>6</sup> In one case, a pregnant woman was reportedly transferred no fewer than 6 times within 3 months on several hours-long trips, including one 23-hour trip that resulted in hospitalization due to exhaustion and dehydration.<sup>7</sup> In another instance, a pregnant woman detained at Mesa Verde in 2015 suffered a miscarriage after falling on her stomach as a result of being shackled at the wrists and belly.<sup>8</sup>

Medical experts have expressed serious concerns regarding ICE's ability to provide adequate health services to pregnant women. The American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American Academy of Family Physicians state that “the conditions in DHS facilities are not appropriate for pregnant women or children.”<sup>9</sup> Recent reports cite the inadequate care that pregnant women receive while in ICE custody, pregnant

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<sup>5</sup> See *Complaint: U.S. Immigration and Customs Enforcement's Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>

<sup>6</sup> Khala James, *Upholding the Dignity of Incarcerated Women*, THE CENTER FOR AMERICAN PROGRESS, Dec. 22, 2017, available at <https://www.americanprogress.org/issues/women/news/2017/12/22/444468/upholding-dignity-incarcerated-women/>

<sup>7</sup> See *Complaint: U.S. Immigration and Customs Enforcement's Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>

<sup>8</sup> Women's Refugee Commission, *Prison for Survivors: the Detention of Women Seeking Asylum in the United States*, Oct. 2017, available at <https://www.womensrefugeecommission.org/rights/resources/document/download/1528>

<sup>9</sup> American Academy of Pediatrics, American College of Obstetricians and Gynecologists, and American Academy of Family Physicians, *Letter to ICE Acting Director Homan*, Mar. 30, 2018, available at [http://www.aifa.org/infoNet/medic-professionals-against-ice-detention-policies?utm\\_source=aifa.org&utm\\_medium=InfoNet%20Search](http://www.aifa.org/infoNet/medic-professionals-against-ice-detention-policies?utm_source=aifa.org&utm_medium=InfoNet%20Search)

women's lack of access to medical care, and their heightened vulnerability to sexual assault.<sup>10][11]</sup>

Additionally, your office has released three reports in the past year citing a number of concerns related to the procurement, oversight, and conditions of ICE detention facilities. One of these reports found that an inspection of four facilities raised concerns that they “undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.”<sup>12</sup>

ICE has failed to abide by its own standards of care, and appears to be in direct violation of its own policies regarding pregnant women, including the ICE Performance Based National Detention Standard (PBNDS) addressing Medical Care for Women, ICE Family Residential Standards, August 2016 ICE Memo on the Identification and Monitoring of Pregnant Detainees, and ICE Health Service Corps (IHSC) policies on the provision of health care services for detained non-citizens, as well as widespread medical standards concerning the treatment of pregnant women.<sup>13</sup>

Given the multiple findings of harmful and substandard conditions of detention for this particularly vulnerable population, we ask that you open an investigation into the treatment and care of pregnant women in ICE detention facilities. We request that this investigation and the ensuing report include the following:

- An analysis of interviews with detention facility staff, including ICE, contract, and medical staff, pregnant women in detention at any time during their pregnancy, as well as

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<sup>10</sup> See *Complaint: U.S. Immigration and Customs Enforcement’s Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>; Kate Morrissey, *Pregnant Woman Fears Miscarriage in Immigration Detention*, THE SAN DIEGO UNION-TRIBUNE, Aug. 21 2017, available at <http://www.sandiegouniontribune.com/news/immigration/sd-me-otay-pregnancy-20170825-story.html>; Roque Planas, *Two Women Say They Lost Pregnancies in Immigrant Detention Since July*, HUFFINGTON POST, Sep. 27, 2017, available at [https://www.huffingtonpost.com/entry/immigrant-detention-pregnancy\\_us\\_59cbace4e4b05063fe0e211b](https://www.huffingtonpost.com/entry/immigrant-detention-pregnancy_us_59cbace4e4b05063fe0e211b); Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*, Mar. 17, 2009, available at <https://www.hrw.org/report/2009/03/17/detained-and-dismissed/womens-struggles-obtain-health-care-united-states>; Yamileth Garcia, *Immigration Detention is Inhumane. But for Pregnant Women, It’s Trauma*, THE GUARDIAN, Jul. 27, 2015, available at <https://www.theguardian.com/commentisfree/2015/jul/27/immigration-detention-pregnant-women-conditions>

<sup>11</sup> American Academy of Pediatrics, American College of Obstetricians and Gynecologists, and American Academy of Family Physicians, *Letter to ICE Acting Director Homan*, Mar. 30, 2018, available at [http://www.aila.org/infonet/medic-professionals-against-ice-detention-policies?utm\\_source=aila.org&utm\\_medium=InfoNet%20Search](http://www.aila.org/infonet/medic-professionals-against-ice-detention-policies?utm_source=aila.org&utm_medium=InfoNet%20Search)

<sup>12</sup> *Department of Homeland Security Office of Inspector General Report*, Dec. 11, 2017, available at <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>

<sup>13</sup> See *Complaint: U.S. Immigration and Customs Enforcement’s Detention of Pregnant Women*, Sep. 26, 2017, available at <https://www.womensrefugeecommission.org/images/zdocs/PUBLIC-VERSION-Complaint-to-CRCL-OIG-Pregnant-Women-in-ICE-Custody-11-13-17.pdf>

women who have recently given birth. These interviews should take place in private and confidential settings.

- An analysis of interviews with independent medical care providers who contract with ICE to provide specialized care for detained pregnant women. These interviews should take place in private and confidential settings.
- Data and analysis relating to the number of pregnant women in ICE custody over the last three fiscal years until the present; the justification for their detention, the length of their detention; the process for their intake, transfer, and release to or from a detention facility (including the use and extent of restraints and shackling of pregnant women); the quality and consistency of prenatal care provided to them, their treatment by facility officials, whether and how special accommodations for pregnant women are meaningfully implemented; the process for monitoring and tracking the medical condition of pregnant women while they are in custody; the cleanliness of ICE detention facilities; and reporting on numbers of pregnant women in detention during any stage of their pregnancy, labor, and postpartum recovery, including any complications such as miscarriages that occurred as well as the postpartum resources provided to women after they give birth to their child.
- An analysis of the December directive as it relates to the use of limited ICE resources, the standards of care ICE is able to provide to pregnant women in detention facilities, and public safety implications for the release of pregnant women.
- Conclusions about whether the public-safety benefits of ending the presumption of release for pregnant women are properly weighed against the inherent deleterious effects of detention on the health of the pregnant women, whether ICE is able to provide appropriate medical care and ensure appropriate treatment for pregnant women in a detention setting, whether pregnant women in detention are at higher risk for becoming victims of sexual abuse, and whether ICE detention facilities are abiding by the standards of care for pregnant detainees as laid out in ICE's governing policy documents.
- An examination of the use of individualized determinations and discretion by ICE officials as it relates to the detention of pregnant women, including the frequency, application, and standards applied to such determinations.

Thank you for your attention to this matter.

Sincerely,



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KAMALA D. HARRIS  
United States Senator



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TOM CARPER  
United States Senator



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MARGARET WOOD HASSAN  
United States Senator



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PATTY MURRAY  
United States Senator