

**Congress of the United States**  
**Washington, DC 20515**

October 31, 2017

The Honorable Elaine Duke  
Acting Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Acting Secretary Duke:

We write to express our deep concern about reports of increased rates of detention of pregnant immigrant women across the country. Recent reports indicate that U.S. Immigration and Customs Enforcement (ICE) detained nearly 68,000 women in Fiscal Year (FY) 2017, of which 525 were pregnant.<sup>1</sup> While it is unavoidable that some women who come into Customs and Border Protection (CBP) or ICE custody will be pregnant, especially in light of the high rates of sexual assault women and girls experience on their journey, attorneys and advocates are reporting a marked increase in the number of pregnant women with serious medical concerns coming to their attention in recent months, and a seeming shift in the agency's willingness to release pregnant women once the pregnancy is identified. Alarming, there have been at least three miscarriages in detention in FY 2017, reportedly due to mistreatment and medical neglect, a cruel trauma that no expecting mother should have to endure.<sup>2</sup>

On September 26, 2017, a complaint was filed on behalf of several women who either are or were pregnant in ICE custody; some were still in detention at the time the complaint was filed.<sup>3</sup> Given inadequacies in the medical care available and the overall stress and trauma of being detained, it is unconscionable that ICE should detain pregnant women except in the most extraordinary circumstances. Formerly and currently detained pregnant women and their attorneys report that pregnant women receive only the bare minimum of services and accommodations, and are routinely denied extra blankets, additional food, and adequate prenatal care.<sup>4</sup> Pregnant women are referred to outside obstetricians for their care and often endure shackling during transport to and from physicians' offices, with sometimes horrific consequences.<sup>5</sup> Case examples such as the following illustrate the myriad ways in which detention can be harmful to pregnant women and their children:

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<sup>1</sup> Roque Planas, *Two Women Say They Lost Pregnancies While in Immigrant Detention Since July*, HUFFINGTON POST (Sep. 27, 2017) available at: [http://www.huffingtonpost.com/entry/immigrant-detention-pregnancy\\_us\\_59cbace4e4b05063fe0e211b](http://www.huffingtonpost.com/entry/immigrant-detention-pregnancy_us_59cbace4e4b05063fe0e211b).

<sup>2</sup> *Id.*

<sup>3</sup> *Complaint: U.S. Immigration and Customs Enforcement's Detention and Treatment of Pregnant Women* (Filed Sep. 26, 2017) available at: <https://www.aclu.org/legal-document/pregnant-women-ice-custody-complaint-dhs-office-civil-rights-and-civil-liberties-and> [hereinafter "Complaint: ICE Treatment of Women"].

<sup>4</sup> *Prison for Survivors: A Report on the Detention of Women Seeking Asylum in the United States*, WOMEN'S REFUGEE COMMISSION (Oct. 2017) available at: <https://www.womensrefugeecommission.org/rights/resources/1528-prison-for-survivors-women-in-us-detention-oct2017> [hereinafter "Prison for Survivors"].

<sup>5</sup> *Shackle A Pregnant Woman, Risk a Foreseeable Tragedy*, ACLU (Jun. 18, 2015) available at: <https://www.aclunc.org/blog/shackle-pregnant-woman-risk-foreseeable-tragedy>

who are not subject to mandatory detention.<sup>11</sup> The memo emphasizes the need for regular and appropriate medical care for pregnant women as well as for regular review of the custody determination of pregnant women and whether her continued detention remains “warranted” and “appropriate.”

Despite these policies, reports of pregnant women in custody and changes to the agency’s use of prosecutorial discretion as prescribed by President Trump’s January 25, 2017 executive orders<sup>12</sup> by nongovernmental organizations and the media leave us concerned that ICE has altered or revoked its policies on the detention of pregnant women. At a minimum, it is clear that oversight and accountability mechanisms designed to ensure the safety of pregnant women are grossly lacking. We therefore seek answers to the following questions, and request that your response be received within 30 days:

- How many pregnant women were in CBP and in ICE custody on the date this letter was transmitted (10/31/2017) and on the date of the agency’s response? (disaggregated by component agency and between family detention and ICE adult detention facilities)
- What is the average daily population of pregnant women in CBP and in ICE custody? (disaggregated by component agency and between family detention and adult facilities)
- How many pregnant women were held in CBP and in ICE custody each quarter beginning with the first quarter of FY 13 to date? (disaggregated by component agency and between family detention and adult facilities)
- For each fiscal year since FY 2013 to date, what is the average length of stay for pregnant women in ICE custody (disaggregated between family detention and adult facilities)? Please break this down as follows:
  - The number of pregnant women in detention for less than 72 hours
  - The number of pregnant women in detention for more than 72 hours and less than one week
  - The number of pregnant women in detention for more than one week and less than one month
  - The number of pregnant women in detention for more than one month
  - The number of pregnant women in detention for more than two months
- What is the status of the August 15, 2016 ICE Memorandum on Identification and Monitoring of Pregnant Detainees? Does the memorandum remain in effect? What changes to the memorandum were made or implied by the January 25, 2017 executive orders on immigration and border security? Please provide a copy of the most current form of the memorandum.

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<sup>11</sup> ICE Memorandum on Identification and Monitoring of Pregnant Detainees (Aug. 15, 2016) available at: [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>12</sup> Specifically, the Executive Order on Border Security and Immigration Enforcement Improvements and the Executive Order (<https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>) and the Executive Order on Enhancing Public Safety in the Interior of the United States (<https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>)

- Teresa, a Honduran asylum seeker, reported to CBP personnel at the San Ysidro port of entry that she was pregnant, in pain, and bleeding. Over the next four days, after she was transferred to ICE custody, she received no medical care despite having a medical intake screening upon her arrival at the Otay Mesa Detention Center. It was not until six days after she initially reported her pain and bleeding to CBP personnel that she was informed that she had miscarried.
- Jacinta found out she was pregnant while in detention at the Northwest Detention Center. When ICE told her she was being deported, she began to feel anxious and to develop pains and nausea. Several days later, she began to have bleeding. Despite telling medical personnel she was in severe pain, Jacinta, was forced to wait over an hour to see a doctor, who ordered her to be transported to a hospital. Because the ambulance was so slow in coming, Jacinta had to be transported sitting up in the back of a patrol car, which made the bleeding worse. At the hospital, she learned she had miscarried.<sup>6</sup>
- Rosa, a Salvadoran asylum seeker, was detained for months and transferred at least six times to different facilities in the El Paso area despite her asylum claim and complications with her pregnancy. One transfer involved a 23-hour round trip with extremely limited access to food and a bathroom, after which she was hospitalized due to exhaustion and dehydration. While detained, she experienced nausea, abdominal pain, and vomited blood, and she reports that she received insufficient prenatal vitamins and medical care.<sup>7</sup>
- Laura, an asylum seeker from Honduras, was detained in the South Texas Family Residential Center, one of the two family detention facilities in Texas, together with her five year old daughter. She'd experienced a miscarriage a year earlier after fleeing a gang who had threatened to kill her, and describes her experience in Dilley: "I have vomited four times here at STFRC. I also get headaches and feel dizzy sometimes, probably in part because the food here makes me lose my appetite and it is hard for me to eat when I am depressed. I have not told the doctor about most of this because he has not asked how I am feeling in the three times I have visited him."
- Ana,<sup>8</sup> who was pregnant when she was detained at Eloy, became so desperate to get out of detention because she feared it would harm her child that she accepted deportation back into the hands of her abusive partner.<sup>9</sup>

The detention of pregnant women is cruel, high-risk, and almost never appropriate given the danger it poses to the life of both the mother and her unborn child. That is why ICE issued minimum standards for the care of pregnant women in its custody<sup>10</sup> and, in 2016, issued a memorandum to the field on Identification and Monitoring of Pregnant Detainees that prohibits the detention of pregnant women in all but the most "extraordinary circumstances" and for those

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<sup>6</sup> Liz Jones, *Her Miscarriage in ICE Detention Raises Questions About Care*, KUOW (Jul. 17, 2017) available at: <http://kuow.org/post/her-miscarriage-ice-detention-raises-questions-about-care>.

<sup>7</sup> *Complaint: ICE Treatment of Women*.

<sup>8</sup> Name changed

<sup>9</sup> *Prison for Survivors*

<sup>10</sup> 2011 Performance Based National Detention Standards 4.3 (Medical Care) and 2.11 (Sexual Abuse and Assault Prevention and Intervention), available at: <https://www.ice.gov/detention-standards/2011>; Family Residential Standards, available at: <https://www.ice.gov/detention-standards/family-residential#wcm-survey-target-id>

- What is the current policy on the detention, release, or use of alternatives to detention for pregnant women who have passed a credible fear or reasonable fear interview? Does it differ in any way from the above cited policies?
- What is the current policy on shackling of pregnant women as a form of discipline, during transport and during labor and delivery? Does it differ in any way from the above cited policies?
- What is the current policy on the use of segregation for pregnant women? Does it differ in any way from the above cited policies?
- How do CBP and ICE ensure that pregnant women are identified, provided with appropriate care, and considered for release in a timely fashion? What oversight functions exist to ensure compliance with ICE policies on the custody of pregnant women, including policies that require ICE to conduct a weekly review of custody and whether detention continues to be appropriate?

Thank you for your attention to this concerning issue. We look forward to hearing from you soon.

Sincerely,

  
 LUCILLE ROVBAL-ALLARD  
 Member of Congress

  
 PRAMILA JAYAPAL  
 Member of Congress

  
 ALMA S. ADAMS  
 Member of Congress

  
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 Member of Congress

  
 EARL BLUMENAUER  
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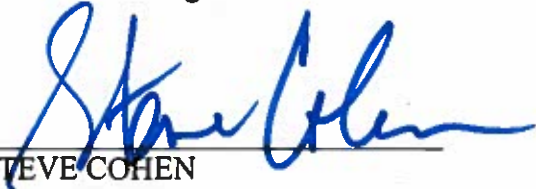
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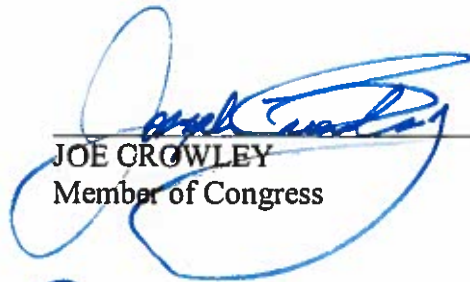
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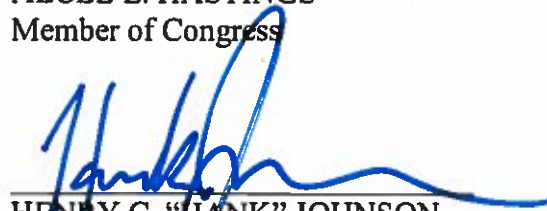
  
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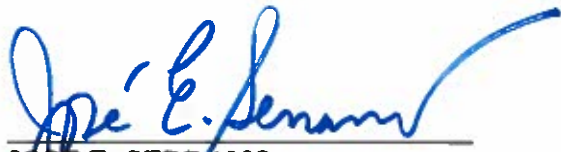
  
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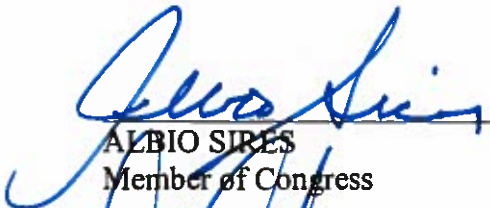
  
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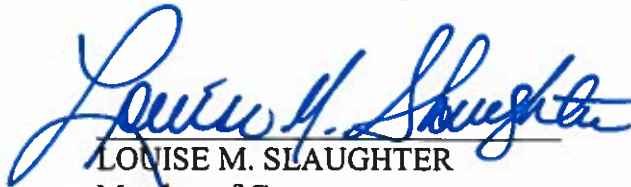
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