

October 20, 2022

Commissioner Chris Magnus
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Via email

Re: Limiting Customs and Border Protection's Detention of People Who Are Pregnant, Postpartum and/or Nursing, and Infants

Dear Commissioner Magnus:

The 137 undersigned organizations and medical professionals write to demand Customs and Border Protection (CBP) limit its detention of pregnant, postpartum, nursing persons, and infants to the minimum time period necessary to process them for release from CBP custody. CBP's current policies and practices are inadequate, and are inconsistent with Immigration and Customs Enforcement's (ICE) recognition that this population should not be detained absent exceptional circumstances.¹

In February 2020, Ana² was arrested by Border Patrol officials while in active labor. She was denied adequate medical care and forced to give birth while holding onto a garbage can at the Chula Vista Border Patrol station. After being taken off site to a hospital following the birth, Ana and her U.S. citizen newborn were forced to return to the station for a night of postpartum detention. A subsequent complaint prompted a DHS Office of Inspector General (OIG) report that featured disturbing images of Ana laying on a concrete bench with her newborn U.S. citizen baby, wrapped in an aluminum blanket for warmth.³

On November 1, 2021, 11 U.S. senators wrote to Department of Homeland Security (DHS) Secretary Alejandro Mayorkas recommending DHS adopt a policy that: "Minimize[s] the time that people ... and their families are in CBP custody to the minimum time period necessary to

¹ U.S. Immigration and Customs Enforcement, *ICE Directive 11032.4: Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals* (July 1, 2021), https://www.ice.gov/doclib/detention/11032.4_IdentificationMonitoringPregnantPostpartumNursingIndividuals.pdf.

² Name has been changed to protect the identity of the individual.

³ ACLU of San Diego and Imperial Counties and Jewish Family Services, Letter to Office of Inspector General Re: U.S. Border Patrol's Abuse and Mistreatment of [redacted] (April 8, 2020), https://www.aclu-sdic.org/sites/default/files/2020-04-07-oig-cmplt-final_redacted.pdf; Office of Inspector General, OIG-21-49, *Review of the February 16, 2020 Childbirth at the Chula Vista Border Patrol Station* (July 20, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-49-Jul21.pdf>.

process them for release from CBP custody,” among other protective measures.⁴ We reiterate the senators’ recommendations and demand CBP take prompt action to protect this vulnerable population and address deficiencies in the agency’s current policy.

On November 23, 2021, CBP issued its current policy regarding pregnant, postpartum, nursing individuals and infants in custody.⁵ As the senators made clear in their follow-up correspondence, the policy guidance falls significantly short of what is needed to properly address the needs of this population.⁶

In your response to the senators in Spring 2022, you indicated that “CBP shares [a] desire to ensure that vulnerable populations spend as little time in custody as possible and are adequately cared for in the limited time they spend in [CBP] facilities.”⁷ In the letter, you explain that “[t]hese individuals are specifically prioritized for expedited processing;” however, the current policy fails to offer any mention of expedited processing or address the concern that detention in what are supposed to be short-term CBP facilities threatens the health and dignity of people who are pregnant, postpartum, and/or nursing, and their newborns.

Moreover, we do not believe that the current policy is having its intended effect of improving treatment and conditions for the population while in CBP facilities. For example, one mother from Nicaragua told the ACLU in March, 2022 that her 6-month-old son was denied medical assistance from CBP for four days, despite her requests and him having respiratory problems that caused pneumonia. She also reported agents yelled at her when she tried to breastfeed him and shamed her for doing so. The family was not provided an initial medical intake, was not given welfare checks every 15 minutes and was provided only water and milk for her children.

The risks of CBP detention that the new guidance purports to mitigate, including limited access to medical care and inadequate care for infants, could be prevented altogether if CBP instead prioritized prompt release of pregnant, postpartum, nursing persons, and infants.

We are encouraged that under the leadership of Secretary Mayorkas, DHS has taken steps to improve features of the immigration system that impact populations with unique needs. The

⁴ Letter from Senator Blumenthal, et al., to Secretary Alejandro Mayorkas (Nov. 1, 2021), <https://www.blumenthal.senate.gov/imo/media/doc/2021.11.01%20DHS%20CBP%20Pregnancy%20Policy%20Letter.pdf>.

⁵ U.S. Customs and Border Protection, *Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody*, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/pregnancy-postpartum-infants-policy-signed.pdf#:~:text=See%20CBP%20Policy%20Memorandum%2C%20Pregnancy%20and%20Childbirth%20Guidance%2C,baby%20wipes%2C%20and%20infant%20formula%20available%20for%20infants.>

⁶ Letter from Senator Blumenthal, et al., to DHS Secretary Alejandro Mayorkas and CBP Commissioner Chris Magnus (February 7, 2022), attached.

⁷ Letter from CBP Commissioner Chris Magnus to Senator Blumenthal (April 16, 2022), attached.

administration should continue to identify areas for further improvement and we ask that you promptly expand the November 23, 2021, policy to include specific directives to:

- a.) Expedite processing to minimize the time that people who are pregnant, postpartum, and/or nursing, and their families, are in CBP custody to only the time period necessary to process them for release from CBP custody. In no case should custody exceed 12 hours from the time of initial apprehension.
- b.) Ensure that, together with their families, people who are pregnant, postpartum, and/or nursing are released from CBP custody as soon as possible after any discharge from an offsite hospital, and not transferred back to CBP detention for any purposes, including processing.

Thank you for your continued consideration of these important issues. We look forward to receiving a response from you by November 30, 2022. In the meantime, if you have any questions or need further detail, please contact Shaw Drake, Senior Policy Counsel, ACLU (sdrake@aclu.org) and Monika Y. Langarica, Staff Attorney, UCLA Center for Immigration Law and Policy (langarica@law.ucla.edu).

Sincerely,

American Civil Liberties Union

Jewish Family Service of San Diego

UCLA Center for Immigration Law and Policy

And the undersigned Advocacy Organizations and Medical Professionals:

(82) Advocacy Organizations

#WelcomeWithDignity

African Human Rights Coalition

Al Otro Lado

Aldea - The People's Justice Center

Alianza Americas

Alliance San Diego

American Friends Service Committee (AFSC)

Asian Pacific Institute on Gender-Based Violence

Asylum Seeker Advocacy Project (ASAP)

Autistic Self Advocacy Network

Bend the Arc: Jewish Action

Border Organizing Project

Carolinas Pediatrics

Casa Familiar

Catholic Charities of Southern New Mexico

Catholic Legal Immigration Network

Center for Gender & Refugee Studies

Center for Law and Social Policy (CLASP)

Center for Victims of Torture

Children's HealthWatch

Church World Service

Coalition on Human Needs

Community for Children, Inc.

Comunidad de Apoyo San Diego

Doctors for Camp Closure

Espacio Migrante

Florence Immigrant and Refugee Rights Project

Freedom for Immigrants

Haitian Bridge Alliance

Houston Immigration Legal Services Collaborative

Human Rights First

Immigrant Defenders Law Center

Immigration Equality

Immigration Hub

International Rescue Committee

Justice Action Center

Kino Border Initiative

Latin American Working Group (LAWG)

Lawyers for Good Government

League of Conservation Voters

Migrant Clinicians Network

MomsRising

National Action Network, Washington Bureau

National Council of Jewish Women

National Immigrant Justice Center

National Immigration Law Center

National Immigration Litigation Alliance

National Immigration Project (NIPNLG)

National Justice For Our Neighbors

National Latina Institute for Reproductive Justice

National Partnership for Women & Families

NETWORK Lobby for Catholic Social Justice

New York Immigration Coalition

ParentsTogether

Physicians for Human Rights

Planned Parenthood Federation of America

Los Angeles City Health Commission

Project Lifeline

Refugee Health Alliance

Rocky Mountain Immigrant Advocacy Network

San Diego Immigrant Rights Consortium

San Diego Rapid Response Network

Sanctuary for Families

Save the Children

SIREN

South Bay People Power

Southern Border Communities Coalition

Southern California Immigration Project

Sunita Jain Anti-Trafficking Initiative

Tahirih Justice Center

Texas Civil Rights Project

The Children's Partnership

The Leadership Conference on Civil and Human Rights

The San Diego LGBT Community Center

UndocuBlack Network

Unified US Deported Veterans Resource Center

University of California, San Diego

Washington Office on Latin America

Wind of the Spirit Immigrant Resource Center

Witness in the Border

Women's Refugee Commission

Young Center for Immigrant Children's Rights

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Marsha Griffin, MD FAAP, Pediatrician

Anna Haas, Nurse Midwife, Holy Family Services

John Harlow, Attending Physician, Children's Hospital of Los Angeles

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