

116TH CONGRESS
1ST SESSION

H. R. 3563

To ensure the humane treatment of pregnant women by reinstating the presumption of release and prohibiting shackling, restraining, and other inhumane treatment of pregnant detainees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2019

Ms. GARCIA of Texas (for herself, Mrs. CAROLYN B. MALONEY of New York, Ms. NORTON, Mr. ESPAILLAT, Mrs. KIRKPATRICK, Mr. CARSON of Indiana, Mr. GRIJALVA, Ms. ESCOBAR, Mr. CÁRDENAS, Mr. VARGAS, Ms. SHALALA, Ms. SCHAKOWSKY, Ms. WASSERMAN SCHULTZ, Mr. BLUMENAUER, Ms. KAPTUR, Mrs. NAPOLITANO, Mr. JOHNSON of Georgia, Ms. MOORE, Mr. RUSH, Ms. ADAMS, Ms. TLAIB, Ms. MENG, Mr. GARCÍA of Illinois, Mr. GONZALEZ of Texas, Mr. NADLER, Mr. MCGOVERN, Ms. DEGETTE, Ms. DELAURO, Mr. HASTINGS, Ms. HAALAND, Ms. VELÁZQUEZ, Mr. CISNEROS, Mr. POCAN, and Ms. OCASIO-CORTEZ) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure the humane treatment of pregnant women by reinstating the presumption of release and prohibiting shackling, restraining, and other inhumane treatment of pregnant detainees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Stop Shackling and
3 Detaining Pregnant Women Act”.

4 **SEC. 2. LIMITATION ON DETENTION OF PREGNANT WOMEN**
5 **AND MOTHERS OF NEWBORNS.**

6 (a) PRESUMPTION OF RELEASE.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the Secretary—

9 (A) shall not detain a person under any
10 provision of the Immigration and Nationality
11 Act (8 U.S.C. 1101 et seq.) during pregnancy
12 or postpartum recovery, pending a decision with
13 respect to whether the person is to be removed
14 from the United States; and

15 (B) shall immediately release any detainee
16 found to be pregnant.

17 (2) EXCEPTIONS.—The Secretary may detain
18 pursuant to the Immigration and Nationality Act (8
19 U.S.C. 1101 et seq.) a person during pregnancy or
20 postpartum recovery under extraordinary circum-
21 stances in which the Secretary makes an individual-
22 ized determination that credible, reasonable grounds
23 exist to believe that the person presents an imme-
24 diate and serious threat of hurting herself or others.

25 (3) REMOVAL.—In a case in which detention is
26 the least restrictive means of effectuating the re-

1 removal from the United States of a pregnant person
2 who is the subject of a final order of deportation or
3 removal, the Secretary may, solely for the purpose of
4 such removal, detain the pregnant person for a pe-
5 riod that is—

6 (A) the shortest possible period imme-
7 diately preceding the removal of the person
8 from the United States; and

9 (B) not more than 5 days.

10 (b) WEEKLY REVIEW REQUIRED.—

11 (1) IN GENERAL.—With respect to a detainee
12 detained under paragraph (2) of subsection (a), not
13 less frequently than once each week, the Secretary
14 shall conduct an individualized review to determine
15 whether the detainee continues to be subject to de-
16 tention under that paragraph.

17 (2) RELEASE.—In the case of a determination
18 under paragraph (1) that a pregnant detainee is not
19 subject to detention under subsection (a)(2), not
20 later than 1 day after the date on which the Sec-
21 retary makes the determination, the Secretary shall
22 release the detainee.

1 **SEC. 3. HUMANE TREATMENT OF PREGNANT WOMEN**
2 **WHILE IN DETENTION.**

3 (a) PROHIBITION ON RESTRAINT OF PREGNANT DE-
4 TAINÉES.—

5 (1) PROHIBITION.—Except as provided in para-
6 graph (2), a detention facility shall not use a re-
7 straint on a detainee—

8 (A) known to be pregnant, including dur-
9 ing—

10 (i) labor;

11 (ii) transport to a medical facility or
12 birthing center; and

13 (iii) delivery; or

14 (B) during postpartum recovery.

15 (2) USE OF RESTRAINTS FOR MEDICAL PUR-
16 POSES AND IN EXTRAORDINARY CIRCUMSTANCES.—

17 (A) IN GENERAL.—Notwithstanding para-
18 graph (1), subject to subparagraph (B), use of
19 a restraint on a detainee described in para-
20 graph (1) may be permitted only—

21 (i) for a medical purpose if the lead
22 medical staff of the detention facility who
23 is a licensed health care provider has or-
24 dered the use of the restraint for the med-
25 ical purpose; or

1 (ii) in an extraordinary circumstance,
2 except for a medical purpose, in which the
3 facility administrator has ordered the use
4 of the restraint after making an individual-
5 ized determination that—

6 (I) credible, reasonable grounds
7 exist to believe the detainee presents
8 an immediate and serious threat of
9 hurting staff or others; or

10 (II) reasonable grounds exist to
11 believe the detainee presents an imme-
12 diate and credible risk of escape that
13 cannot be reasonably minimized
14 through any other method.

15 (B) REQUIREMENT FOR LEAST RESTRIC-
16 TIVE RESTRAINTS.—In the rare event of an ex-
17 traordinary circumstance described in subpara-
18 graph (A)(ii), only the least restrictive restraint
19 necessary shall be used, except that—

20 (i) if a doctor, nurse, or other health
21 professional treating a detainee described
22 in paragraph (1) requests that a restraint
23 not be used, the detention officer accom-
24 panying the detainee shall immediately re-
25 move any restraint;

1 (ii) under no circumstance shall a leg,
2 waist, or four-point restraint be used;

3 (iii) under no circumstance shall a
4 wrist restraint be used to bind the hands
5 of a detainee described in paragraph (1)
6 behind her back or to another person; and

7 (iv) under no circumstance shall any
8 restraint be used on any detainee who is in
9 labor or delivery.

10 (3) RECORD OF EXTRAORDINARY CIR-
11 CUMSTANCES.—

12 (A) REQUIREMENTS.—If a restraint is
13 used on a detainee pursuant to paragraph
14 (2)(A), not later than 5 days after the date on
15 which the restraint was used, the facility ad-
16 ministrator shall—

17 (i) make a written finding that de-
18 scribes the extraordinary circumstance that
19 dictated the use of the restraint; and

20 (ii) submit the finding to the Director.

21 (B) RETENTION.—

22 (i) DETENTION FACILITY.—With re-
23 spect to a written finding under subpara-
24 graph (A)(i), the facility administrator
25 shall—

1 (I) keep the finding on file at the
2 applicable detention facility for not
3 less than 5 years after the date on
4 which the restraint was used; and

5 (II) shall make the finding avail-
6 able for public inspection.

7 (ii) IMMIGRATION AND CUSTOMS EN-
8 FORCEMENT.—With respect to a written
9 finding submitted to the Director under
10 subparagraph (A)(ii), the Director shall
11 maintain the written finding and make the
12 finding available for public inspection.

13 (iii) PRIVACY.—With respect to a
14 written finding made available for public
15 inspection under clause (i) or (ii), the indi-
16 vidualy identifying information of a de-
17 tainee shall not be made available for pub-
18 lic inspection without the prior written
19 consent of the detainee.

20 (b) PROHIBITION ON PRESENCE OF DETENTION OF-
21 FICERS.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), no detention officer shall be present in
24 the room during a pelvic exam, labor, delivery, or
25 treatment of any other symptom relating to a preg-

1 nancy of a detainee, unless specifically requested by
2 medical personnel.

3 (2) EXCEPTION.—If the presence of a detention
4 officer is requested by medical personnel, the deten-
5 tion officer shall—

6 (A) be female, if practicable; and

7 (B) remain at a reasonable distance from
8 the detainee and toward her head to protect her
9 privacy.

10 (3) USE OF RESTRAINTS.—If a restraint is used
11 on a detainee pursuant to subsection (a)(2)(A), a de-
12 tention officer shall remain immediately outside the
13 room at all times so that the officer may promptly
14 remove the restraint if requested by medical per-
15 sonnel, as required by subsection (a)(2)(B)(i).

16 (c) ACCESS TO SERVICES.—A pregnant detainee shall
17 have access to health care services, including comprehen-
18 sive services relating to reproductive health care and preg-
19 nancy, including—

20 (1) routine or specialized prenatal care;

21 (2) comprehensive counseling and assistance;

22 (3) postpartum follow-up;

23 (4) lactation services; and

24 (5) abortion services.

1 **SEC. 4. REPORTING; RULEMAKING.**

2 (a) REPORTS.—

3 (1) REPORTS BY FACILITY ADMINISTRATORS.—

4 Not later than 30 days after the end of each quarter
5 of a fiscal year, the facility administrator of each de-
6 tention facility that detained a pregnant detainee
7 during the quarter shall submit to the Secretary a
8 written report that includes, with respect to the
9 quarter, the following:

10 (A) An account of every instance of the
11 use of a restraint on a pregnant detainee, in-
12 cluding the justification for such restraint and
13 the name of the facility administrator who
14 made the individualized determination under
15 section 3(a)(2)(A)(ii).

16 (B) The number of pregnant detainees
17 held at the facility.

18 (C) The average length of detention of
19 pregnant detainees.

20 (D) The number of pregnant detainees de-
21 tained longer than 15 days.

22 (E) The number of pregnant detainees de-
23 tained longer than 30 days.

24 (2) AUDIT AND REPORTS BY SECRETARY.—Not
25 later than 90 days after the end of each fiscal year,
26 the Secretary shall—

1 (A) complete an audit of the information
2 submitted under subparagraphs (B) through
3 (E) of paragraph (1); and

4 (B) submit to the appropriate committees
5 of Congress a report that includes all of the in-
6 formation submitted to the Secretary under
7 paragraph (1), disaggregated by facility.

8 (3) PRIVACY.—A report submitted under this
9 subsection shall not contain the individually identi-
10 fying information of any detainee.

11 (4) PUBLIC INSPECTION.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), a report submitted under
14 this subsection shall be made available for pub-
15 lic inspection.

16 (B) FACILITY ADMINISTRATOR.—A report
17 submitted under this subsection that is made
18 available for public inspection shall not contain
19 the name of the facility administrator otherwise
20 included under paragraph (1)(A).

21 (b) RULEMAKING.—The Secretary and the Attorney
22 General shall adopt regulations or policies to carry out this
23 Act at every detention facility.

24 **SEC. 5. DEFINITIONS.**

25 In this Act:

1 (1) APPROPRIATE COMMITTEES OF CON-
2 GRESS.—The term “appropriate committees of Con-
3 gress” means—

4 (A) the Committee on the Judiciary and
5 the Committee on Appropriations of the Senate;
6 and

7 (B) the Committee on the Judiciary and
8 the Committee on Appropriations of the House
9 of Representatives.

10 (2) DETAINEE.—The term “detainee” includes
11 any adult or juvenile person detained by any Fed-
12 eral, State, or local law enforcement agency (includ-
13 ing under contract or agreement with such agency)
14 under the Immigration and Nationality Act (8
15 U.S.C. 1101 et seq.).

16 (3) DETENTION FACILITY.—The term “deten-
17 tion facility” means a Federal, State, or local gov-
18 ernment facility, or a privately owned and operated
19 facility, that is used, in whole or in part, to hold in-
20 dividuals under the authority of the Director of U.S.
21 Immigration and Customs Enforcement or the Com-
22 missioner of U.S. Customs and Border Protection,
23 including a facility that—

1 (A) holds such individuals under a contract
2 or agreement with the Director or Commis-
3 sioner; or

4 (B) is used, in whole or in part, to hold in-
5 dividuals pursuant to an immigration detainer
6 or similar request.

7 (4) DETENTION OFFICER.—The term “deten-
8 tion officer” means an individual who works at a de-
9 tention facility, including an individual who works at
10 a detention facility pursuant to contract or sub-
11 contract.

12 (5) DIRECTOR.—The term “Director” means
13 the Director of U.S. Immigration and Customs En-
14 forcement.

15 (6) FACILITY ADMINISTRATOR.—The term “fa-
16 cility administrator” means the official who is re-
17 sponsible for oversight of a detention facility or the
18 designee of such official.

19 (7) POSTPARTUM RECOVERY.—The term
20 “postpartum recovery” means the 6-week period, or
21 longer, as determined by the licensed health care
22 provider of a person, following delivery, including the
23 entire period during which the person is in a medical
24 facility, birthing center, or infirmary after birth.

1 (8) RESTRAINT.—The term “restraint” means
2 any physical restraint or mechanical device used to
3 control the movement of the body or limbs of a de-
4 tainee’s body, including—

5 (A) flex cuffs;

6 (B) soft restraints;

7 (C) hard metal handcuffs;

8 (D) a black box;

9 (E) Chubb cuffs;

10 (F) leg irons;

11 (G) belly chains;

12 (H) a security (tether) chain; and

13 (I) a convex shield.

14 (9) SECRETARY.—The term “Secretary” means
15 the Secretary of Homeland Security.

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