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S. 3247

To safeguard the humane treatment of pregnant women by ensuring the presumption of release and prohibiting shackling, restraining, and other inhumane treatment of pregnant detained noncitizens, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2023

Mrs. MURRAY (for herself, Mr. BLUMENTHAL, Mr. BOOKER, Ms. BUTLER, Mr. CARDIN, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mr. FETTERMAN, Mrs. GILLIBRAND, Ms. HIRONO, Ms. KLOBUCHAR, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. PADILLA, Mr. REED, Mr. SANDERS, Mr. VAN HOLLEN, Ms. WARREN, Mr. WELCH, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To safeguard the humane treatment of pregnant women by ensuring the presumption of release and prohibiting shackling, restraining, and other inhumane treatment of pregnant detained noncitizens, 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,*

3 **SECTION 1. SHORT TITLE.**

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

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

3 (a) **PRESUMPTION OF RELEASE.**—

4 (1) **IN GENERAL.**—Except as provided in para-
5 graph (2), the Secretary—

6 (A) shall not detain an individual under
7 any provision of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101 et seq.) who is known
9 to be pregnant, lactating, or postpartum, pend-
10 ing a decision with respect to whether the indi-
11 vidual is to be removed from the United States;
12 and

13 (B) shall immediately release any detained
14 noncitizen found to be pregnant.

15 (2) **EXCEPTIONS.**—The Secretary may detain
16 pursuant to the Immigration and Nationality Act (8
17 U.S.C. 1101 et seq.) an individual who is known to
18 be pregnant, lactating, or postpartum—

19 (A) under extraordinary circumstances in
20 which the Secretary makes an individualized de-
21 termination that credible, reasonable grounds
22 exist to believe that the individual presents an
23 immediate and serious threat of hurting them-
24 selves or others; and

25 (B) if such detention is the least restrictive
26 means available to mitigate such threat.

1 (3) REMOVAL.—In a case in which detention is
2 the least restrictive means of effectuating the re-
3 moval from the United States of a pregnant indi-
4 vidual subject to a final order of deportation or re-
5 moval, the Secretary may, solely for the purpose of
6 such deportation or removal, detain the pregnant in-
7 dividual for a period that is—

8 (A) the shortest possible period imme-
9 diately preceding the deportation or removal of
10 the individual from the United States; and

11 (B) not more than 5 days.

12 (b) BIWEEKLY REVIEW REQUIRED.—

13 (1) IN GENERAL.—With respect to a noncitizen
14 detained under paragraph (2) of subsection (a), not
15 less frequently than every 14 days, the Secretary
16 shall conduct an individualized review to determine
17 whether the detained noncitizen continues to be sub-
18 ject to detention under that paragraph.

19 (2) RELEASE.—In the case of a determination
20 under paragraph (1) that a pregnant noncitizen is
21 no longer subject to detention under subsection
22 (a)(2), not later than 24 hours after the Secretary
23 makes the determination, the Secretary shall release
24 the noncitizen.

1 **SEC. 3. HUMANE TREATMENT OF PREGNANT DETAINED**
2 **NONCITIZENS WHILE IN DETENTION AND**
3 **CUSTODY.**

4 (a) PROHIBITION ON RESTRAINT OF PREGNANT DE-
5 TAINED NONCITIZENS.—

6 (1) PROHIBITION.—Except as provided in para-
7 graph (2), restraints shall not be used on a noncit-
8 izen in the physical custody of the Department of
9 Homeland Security who is known to be—

10 (A) pregnant, including during—

11 (i) labor;

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

14 (iii) delivery;

15 (B) lactating; or

16 (C) postpartum.

17 (2) EXCEPTIONS.—

18 (A) IN GENERAL.—Notwithstanding para-
19 graph (1), subject to subparagraph (B), use of
20 a restraint on a detained noncitizen described
21 in paragraph (1) may be permitted only in an
22 extraordinary circumstance, except in the case
23 of a medical contraindication, in which the fa-
24 cility administrator has ordered the use of the
25 restraint after making an individualized deter-
26 mination that—

1 (i) credible, reasonable grounds exist
2 to believe the detained noncitizen presents
3 an immediate and serious threat of hurting
4 themselves, staff, or others; or

5 (ii) reasonable grounds exist to believe
6 the detained noncitizen presents an imme-
7 diate and credible risk of escape that can-
8 not be reasonably minimized through any
9 other method.

10 (B) REQUIREMENT FOR LEAST RESTRIC-
11 TIVE RESTRAINTS.—In the rare event of an ex-
12 traordinary circumstance described in subpara-
13 graph (A), only the least restrictive restraint
14 necessary shall be used, except that—

15 (i) if a doctor, nurse, or other health
16 professional treating a detained noncitizen
17 requests that a restraint not be used, the
18 detention officer accompanying the de-
19 tained noncitizen shall immediately remove
20 any restraint; and

21 (ii) under no circumstance shall—

22 (I) a leg, waist, or 4-point re-
23 straint be used;

24 (II) a wrist restraint be used to
25 bind the hands of such a detained

1 noncitizen behind the back of the de-
 2 tained noncitizen or to another indi-
 3 vidual;

4 (III) a detained noncitizen be re-
 5 strained in a face-down position or on
 6 their back; or

7 (IV) any restraint be used on any
 8 detained noncitizen who is in labor or
 9 delivering.

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

12 (A) REQUIREMENTS.—If a restraint is
 13 used on a detained noncitizen pursuant to para-
 14 graph (2)(A), not later than 5 days after the
 15 date on which the restraint was used, the facil-
 16 ity administrator shall—

17 (i) record in writing the finding that
 18 describes the medical purpose or extraor-
 19 dinary circumstance that dictated the use
 20 of the restraint; and

21 (ii) submit the finding to the Director.

22 (B) RETENTION.—

23 (i) FACILITY.—With respect to a writ-
 24 ten finding under subparagraph (A)(i), the
 25 facility administrator shall—

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

5 (II) make a copy of the finding
6 available for public inspection on re-
7 quest, only after making appropriate
8 redactions so as to protect personally
9 identifiable information.

10 (ii) IMMIGRATION AND CUSTOMS EN-
11 FORCEMENT.—With respect to a written
12 finding submitted to the Director under
13 subparagraph (A)(ii), the Director shall
14 maintain the written finding and make the
15 finding available for public inspection only
16 after making appropriate redactions so as
17 to protect personally identifiable informa-
18 tion.

19 (b) PROHIBITION ON PRESENCE OF NONMEDICAL
20 STAFF.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), nonmedical staff shall not be present in
23 the room during a pelvic exam, labor, delivery, or
24 treatment of any other symptom relating to a preg-

1 nancy of a detained noncitizen, unless specifically re-
2 quested by medical personnel.

3 (2) EXCEPTION.—If the presence of nonmedical
4 staff is requested by medical personnel, the nonmed-
5 ical staff shall—

6 (A) be of the detained noncitizen’s gender
7 of choice, if practicable; and

8 (B) remain at a reasonable distance from
9 the detained noncitizen and face toward the de-
10 tained noncitizen’s head to protect the privacy
11 of the detained noncitizen.

12 (3) USE OF RESTRAINTS.—If a restraint is used
13 on a detained noncitizen pursuant to subsection
14 (a)(2)(A), an employee of the Department of Home-
15 land Security shall remain immediately outside the
16 room at all times so that the employee may promptly
17 remove the restraint if requested by medical per-
18 sonnel, as required by subsection (a)(2)(B)(i).

19 (c) ACCESS TO SERVICES.—

20 (1) U.S. IMMIGRATION AND CUSTOMS ENFORCE-
21 MENT CUSTODY.—A pregnant detained noncitizen in
22 the custody of U.S. Immigration and Customs En-
23 forcement shall have access to health care services,
24 including comprehensive services relating to repro-
25 ductive health care and pregnancy, including—

- 1 (A) routine or specialized prenatal care;
- 2 (B) comprehensive counseling and assist-
- 3 ance;
- 4 (C) postpartum physical and mental health
- 5 care, including substance use disorder treat-
- 6 ment;
- 7 (D) lactation services; and
- 8 (E) abortion services.

9 (2) U.S. CUSTOMS AND BORDER PROTECTION

10 CUSTODY.—The Commissioner shall ensure that

11 minimum standards of care are met for pregnant de-

12 tained noncitizens in the custody of U.S. Customs

13 and Border Protection.

14 **SEC. 4. NOTICE OF RIGHTS AND TRAINING.**

15 (a) NOTICE OF DETAINED NONCITIZEN RIGHTS.—

16 The Secretary shall provide to each detained noncitizen,

17 in the detained noncitizen’s native language, notice of the

18 detained noncitizen’s rights under this Act.

19 (b) TRAINING FOR DHS EMPLOYEES.—At the time

20 of hiring, and annually thereafter, the Secretary shall pro-

21 vide training on the requirements of this Act to each em-

22 ployee of the Department of Homeland Security who has

23 a role in the detention or care of a pregnant detained non-

24 citizen or a postpartum parent of a newborn detained

1 under the Immigration and Nationality Act (8 U.S.C.
2 1101 et seq.).

3 **SEC. 5. REPORTING; RULEMAKING.**

4 (a) REPORTS.—

5 (1) REPORTS BY FACILITY ADMINISTRATORS.—

6 Not later than 30 days after the end of each quarter
7 fiscal year, the facility administrator of each facility
8 that detained a pregnant noncitizen during the quar-
9 ter shall submit to the Secretary a written report
10 that includes, with respect to the facility during the
11 quarter, the following:

12 (A) An account of every instance of the
13 use of a restraint on a pregnant detained non-
14 citizen during pregnancy, labor, or postpartum
15 recovery, including the type of restraint, the
16 justification for the use of such restraint, and
17 the name of the facility administrator who
18 made the individualized determination under
19 section 3(a)(2)(A).

20 (B) The number of pregnant noncitizens
21 held at the facility.

22 (C) The average length of detention of
23 pregnant noncitizens.

24 (D) The number of pregnant noncitizens
25 detained longer than 15 days.

1 (E) The number of pregnant noncitizens
2 detained longer than 30 days.

3 (F) The number of pregnant noncitizens
4 who gave birth while detained, and a descrip-
5 tion of the outcomes of such pregnancies, in-
6 cluding any pregnancy that resulted in a live
7 birth, stillbirth, miscarriage, abortion, ectopic
8 pregnancy, maternal death, neonatal death, or
9 preterm birth.

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

13 (A) complete an audit of the information
14 submitted under subparagraphs (B) through
15 (E) of paragraph (1);

16 (B) submit to the appropriate committees
17 of Congress a report that includes all informa-
18 tion submitted under paragraph (1),
19 disaggregated by facility; and

20 (C) issue regulations in accordance with
21 national standards regarding minimum stand-
22 ards facilities should provide.

23 (3) PRIVACY.—A report submitted under this
24 subsection shall not contain the individually identi-
25 fying information of any detained noncitizen.

1 (4) PUBLIC INSPECTION.—

2 (A) IN GENERAL.—Except as provided in
3 subparagraph (B), a report submitted under
4 this subsection shall be made available for pub-
5 lic inspection.

6 (B) FACILITY ADMINISTRATOR.—A report
7 submitted under this subsection that is made
8 available for public inspection shall not contain
9 the name of the facility administrator otherwise
10 included under paragraph (1)(A).

11 (b) RULEMAKING.—The Secretary shall adopt regula-
12 tions or policies to carry out this Act at each facility.

13 **SEC. 6. DEFINITIONS.**

14 In this Act:

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

18 (A) the Committee on the Judiciary and
19 the Committee on Appropriations of the Senate;
20 and

21 (B) the Committee on the Judiciary and
22 the Committee on Appropriations of the House
23 of Representatives.

1 (2) COMMISSIONER.—The term “Commis-
2 sioner” means the Commissioner of U.S. Customs
3 and Border Protection.

4 (3) DETAINED NONCITIZEN.—The term “de-
5 tained noncitizen” includes any adult or juvenile in-
6 dividual detained by any Federal, State, or local law
7 enforcement agency (including under contract or
8 agreement with such agency) under the Immigration
9 and Nationality Act (8 U.S.C. 1101 et seq.).

10 (4) DETENTION OFFICER.—The term “deten-
11 tion officer” means an individual who—

12 (A) works at a facility, including an indi-
13 vidual who works at a facility pursuant to a
14 contract or subcontract; and

15 (B) performs duties relating to the secu-
16 rity, custody, or transport of individuals in cus-
17 tody.

18 (5) DIRECTOR.—The term “Director” means
19 the Director of U.S. Immigration and Customs En-
20 forcement.

21 (6) FACILITY.—The term “facility” means a
22 Federal, State, or local government facility, or a pri-
23 vately owned and operated facility, that is used, in
24 whole or in part, to hold individuals under the au-

1 thority of the Secretary of Homeland Security, in-
2 cluding a facility that—

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

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

9 (7) FACILITY ADMINISTRATOR.—The term “fa-
10 cility administrator” means the official responsible
11 for oversight of a facility, or the designee of such of-
12 ficial.

13 (8) POSTPARTUM.—The term “postpartum”
14 means the 1-year period, or longer, as determined by
15 the licensed health care provider of the individual
16 concerned, following delivery, including the entire pe-
17 riod during which the individual is in a medical facil-
18 ity, birthing center, or infirmary after birth.

19 (9) RESTRAINT.—The term “restraint”—

20 (A) means any physical restraint or me-
21 chanical device used to control the movement of
22 the body or limbs of a detained noncitizen’s
23 body, including—

24 (i) flex cuffs;

25 (ii) soft restraints;

- 1 (iii) hard metal handcuffs;
- 2 (iv) a black box;
- 3 (v) Chubb cuffs;
- 4 (vi) leg irons;
- 5 (vii) belly chains;
- 6 (viii) a security (tether) chain;
- 7 (ix) a convex shield; and
- 8 (x) any other type of shackles; and

9 (B) does not include medical restraints.

10 (10) SECRETARY.—The term “Secretary”
11 means the Secretary of Homeland Security.

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