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(Original Signature of Member)

119TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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

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IN THE HOUSE OF REPRESENTATIVES

Ms. GARCIA of Texas introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To safeguard the humane treatment of pregnant and postpartum women by ensuring the presumption of release and prohibiting shackling, restraining, and other inhumane treatment, 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”.

6 **SEC. 2. DEFINITIONS.**

7 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 Homeland Security  
5                   and Governmental Affairs of the Senate;

6                   (B) the Committee on the Judiciary of the  
7                   Senate;

8                   (C) the Committee on Appropriations of  
9                   the Senate;

10                  (D) the Committee on Homeland Security  
11                  of the House of Representatives;

12                  (E) the Committee on the Judiciary of the  
13                  House of Representatives; and

14                  (F) the Committee on Appropriations of  
15                  the House of Representatives.

16           (2) COMMISSIONER.—The term “Commis-  
17           sioner” means the Commissioner for U.S. Customs  
18           and Border Protection.

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

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

3 (A) works at a facility, including an indi-  
4 vidual who works at a facility pursuant to a  
5 contract or subcontract; and

6 (B) performs duties relating to the secu-  
7 rity, custody, or transport of individuals in cus-  
8 tody.

9 (5) DIRECTOR.—The term “Director” means  
10 the Director for U.S. Immigration and Customs En-  
11 forcement.

12 (6) FACILITY.—The term “facility” means a  
13 Federal, State, or local government facility, or a pri-  
14 vately owned and operated facility, that is used, in  
15 whole or in part, to hold individuals under the au-  
16 thority of the Secretary of Homeland Security, in-  
17 cluding a facility that—

18 (A) holds such individuals under a contract  
19 or agreement with the Director or the Commis-  
20 sioner; or

21 (B) is used, in whole or in part, to hold in-  
22 dividuals pursuant to an immigration detainer  
23 or similar request.

24 (7) FACILITY ADMINISTRATOR.—The term “fa-  
25 cility administrator” means the official responsible

1 for oversight of a facility, or the designee of such of-  
2 ficial.

3 (8) POSTPARTUM.—The term “postpartum”  
4 means during the 1-year period, or longer, as deter-  
5 mined by the licensed health care provider of the in-  
6 dividual concerned, following delivery, including the  
7 entire period during which the individual is in a  
8 medical facility, birthing center, or infirmary after  
9 birth.

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

11 (A) means any physical restraint or me-  
12 chanical device used to control the movement of  
13 the body or limbs of a detained noncitizen’s  
14 body for custody purposes, including—

15 (i) flex cuffs;

16 (ii) soft restraints;

17 (iii) hard metal handcuffs;

18 (iv) a black box;

19 (v) Chubb cuffs;

20 (vi) leg irons;

21 (vii) belly chains;

22 (viii) a security (tether) chain;

23 (ix) a convex shield; and

24 (x) any other type of shackles; and

25 (B) does not include medical restraints.

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

3 **SEC. 3. LIMITATION ON DETENTION OF PREGNANT WOMEN**  
4 **AND MOTHERS OF NEWBORNS.**

5           (a) ACCESS TO PREGNANCY TESTING.—The Sec-  
6 retary shall provide every individual being processed into  
7 custody access to pregnancy testing during the initial med-  
8 ical screening.

9           (b) PRESUMPTION OF RELEASE.—

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

12                   (A) may not detain, arrest, or take into  
13 custody an individual under any provision of the  
14 Immigration and Nationality Act (8 U.S.C.  
15 1101 et seq.) who is known to be pregnant, lac-  
16 tating, or postpartum, pending a decision with  
17 respect to whether the noncitizen is to be re-  
18 moved from the United States; and

19                   (B) shall immediately release any detained  
20 noncitizen found to be pregnant.

21           (2) EXCEPTIONS.—The Secretary, pursuant to  
22 chapter 4 of title II of the Immigration and Nation-  
23 ality Act (8 U.S.C. 1221 et seq.), may detain an in-  
24 dividual who is known to be pregnant, lactating, or  
25 postpartum—

1 (A) under extraordinary circumstances in  
2 which the Secretary makes an individualized de-  
3 termination that credible, reasonable grounds  
4 exist to believe that—

5 (i) such individual poses an immediate  
6 and serious risk of physical harm to oth-  
7 ers; and

8 (ii) enrollment in an alternative to de-  
9 tention program cannot mitigate public  
10 safety threats associated with such indi-  
11 vidual; and

12 (B) if such detention is the only means  
13 available to mitigate such threats.

14 (3) REMOVAL.—If detention is the only means  
15 of effectuating the removal from the United States  
16 of a pregnant individual subject to a final order of  
17 deportation or removal, the Secretary, solely for the  
18 purpose of such deportation or removal, may detain  
19 the pregnant individual in temporary housing in ac-  
20 cordance with applicable temporary housing stand-  
21 ards for a period equal to the shorter of—

22 (A) the shortest possible period imme-  
23 diately preceding the deportation or removal of  
24 the individual from the United States; and

25 (B) 5 days.

1 (c) WEEKLY REVIEW.—

2 (1) IN GENERAL.—The Secretary shall conduct  
3 an individualized review of each noncitizen detained  
4 pursuant to subsection (b)(2) not less frequently  
5 than weekly to determine whether such noncitizen  
6 continues to be subject to detention under such sub-  
7 section. Each such review shall be completed within  
8 72 hours after being initiated.

9 (2) RELEASE.—Not later than 24 hours after  
10 the Secretary determines pursuant to paragraph (1)  
11 that a pregnant noncitizen is no longer subject to  
12 detention under subsection (b)(2), the noncitizen  
13 shall be released from the facility in which the non-  
14 citizen had been detained in accordance with safe re-  
15 lease standards. In carrying out such release, an of-  
16 ficer at such facility shall—

17 (A) prepare the noncitizen’s complete med-  
18 ical records, medications, and any supplies re-  
19 quired to maintain the noncitizen’s state of  
20 health until the noncitizen can be seen by a  
21 community health professional; and

22 (B) communicate with the noncitizen’s at-  
23 torney of record, sponsor, or any post-release  
24 service provider as soon as details of the non-  
25 citizen’s planned release are available.

1 **SEC. 4. 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 may not be used on a noncit-  
8 izen who is in the physical custody of the Depart-  
9 ment of Homeland Security, including during trans-  
10 port, if the noncitizen is known to be—

11 (A) pregnant, including during labor and  
12 delivery;

13 (B) lactating; or

14 (C) postpartum.

15 (2) EXCEPTIONS.—

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

25 (i) credible, reasonable grounds exist  
26 to believe the detained noncitizen poses an

1           immediate and serious risk of physical  
2           harm to others; or

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

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

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

19                   (ii) under no circumstance shall—

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

22                           (II) a wrist restraint be used to  
23                           bind the hands of such a detained  
24                           noncitizen behind the back of the de-

1                   tained noncitizen or to another indi-  
2                   vidual;

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

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

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

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

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

20                   (ii) submit the finding to the Director.

21                  (B) RETENTION.—

22                   (i) FACILITY.—With respect to a writ-  
23                   ten finding under subparagraph (A)(i), the  
24                   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) U.S. IMMIGRATION AND CUSTOMS  
11 ENFORCEMENT.—The Director shall main-  
12 tain a written finding submitted to the Di-  
13 rector pursuant to subparagraph (A)(ii)  
14 and make such finding available for public  
15 inspection only after making appropriate  
16 redactions to protect personally identifiable  
17 information.

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

20 (1) IN GENERAL.—Except as provided in para-  
21 graph (2), nonmedical staff may not be present in  
22 a room in which a pelvic or breast exam, labor, de-  
23 livery (whether vaginal or by cesarean delivery), or  
24 treatment of any other symptom relating to a preg-  
25 nancy of a detained noncitizen is occurring unless

1       their presence is specifically requested by medical  
2       personnel and only for a duration that is actually re-  
3       quired to fulfill such request.

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

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

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

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

20       (c) ACCESS TO SERVICES.—

21               (1) U.S. IMMIGRATION AND CUSTOMS ENFORCE-  
22       MENT CUSTODY.—A detained noncitizen in the cus-  
23       tody of U.S. Immigration and Customs Enforcement  
24       shall have access to health care services, including

1 comprehensive counseling and services relating to re-  
2 productive health care and pregnancy, including—

3 (A) routine and specialized prenatal care,  
4 including adequate nutrition and exercise, HIV  
5 testing and treatment, and prenatal vitamins  
6 and vaccines;

7 (B) labor and delivery;

8 (C) treatment for complications from preg-  
9 nancy;

10 (D) substance use disorder treatment;

11 (E) postpartum physical and mental health  
12 care, including postpartum reversible contracep-  
13 tive methods;

14 (F) no-cost supply of menstrual hygiene  
15 products;

16 (G) lactation services; and

17 (H) family planning, continuation of pre-  
18 detention contraceptive methods, and abortion  
19 services.

20 (2) U.S. CUSTOMS AND BORDER PROTECTION  
21 CUSTODY.—The Commissioner shall ensure that  
22 minimum standards of care are met for pregnant de-  
23 tained noncitizens who are in the custody of U.S.  
24 Customs and Border Protection.

1 (d) REQUIREMENT FOR INFORMED MEDICAL CON-  
2 SENT.—Services described in subsection (c)(1) may not be  
3 performed on a detained noncitizen until the provider of  
4 such services obtains informed consent from the noncit-  
5 izen. Medical treatment may not be administered to a de-  
6 tained noncitizen against such noncitizen’s will.

7 (e) MEDICAL CENTER ARRANGEMENTS.—Each facil-  
8 ity administrator shall maintain—

9 (1) an arrangement with the nearest maternity  
10 hospital and ensure facility staff know where to take  
11 pregnant detained noncitizens in case of emergency;  
12 and

13 (2) a policy to ensure the provision of proper  
14 care if a detained noncitizen cannot be moved with  
15 immediacy to a medical center.

16 **SEC. 5. NOTICE OF RIGHTS AND TRAINING.**

17 (a) NOTICE OF DETAINED NONCITIZEN RIGHTS.—  
18 The Secretary shall provide to each detained noncitizen,  
19 in a language or manner that such noncitizen can under-  
20 stand, notice of the detained noncitizen’s rights under this  
21 Act.

22 (b) TRAINING FOR DEPARTMENT OF HOMELAND SE-  
23 CURITY EMPLOYEES.—At the time of hiring, and annually  
24 thereafter, the Secretary shall provide training regarding  
25 the requirements under this Act to each employee of the

1 Department of Homeland Security who is involved in the  
2 detention or care of a pregnant detained noncitizen or a  
3 postpartum parent of a newborn who is being detained  
4 pursuant to chapter 4 of title II of the Immigration and  
5 Nationality Act (8 U.S.C. 1221 et seq.).

6 **SEC. 6. REPORTS; RULEMAKING.**

7 (a) REPORTS.—

8 (1) REPORTS BY FACILITY ADMINISTRATORS.—

9 Not later than 30 days after the end of each cal-  
10 endar quarter, the facility administrator of each de-  
11 tention facility in which 1 or more pregnant nonciti-  
12 zens were detained during such quarter shall submit  
13 a written report to the Secretary that includes, with  
14 respect to the facility during such quarter—

15 (A) an account of every instance of the use  
16 of a restraint on a pregnant detained noncitizen  
17 during pregnancy, labor, or postpartum recov-  
18 ery, including—

19 (i) the type of restraint;

20 (ii) the justification for the use of  
21 such restraint; and

22 (iii) the name of the facility adminis-  
23 trator who made the individualized deter-  
24 mination pursuant to section 4(a)(2)(A);

1 (B) the number of pregnant noncitizens  
2 held at such facility;

3 (C) the number of released pregnant non-  
4 citizens who were held at such facility;

5 (D) the average length of detention of  
6 pregnant noncitizens;

7 (E) the number of pregnant noncitizens  
8 who were detained for between 15 and 30 days;

9 (F) the number of pregnant noncitizens  
10 who were detained longer than 30 days; and

11 (G) the number of pregnant noncitizens  
12 who gave birth while detained and a description  
13 of the outcomes of any pregnancies that ended  
14 in custody, including any pregnancy that re-  
15 sulted in a live birth, a stillbirth, a miscarriage,  
16 an abortion, an ectopic pregnancy, maternal  
17 morbidity, maternal death, neonatal death, or  
18 preterm birth.

19 (2) AUDIT AND REPORTS BY SECRETARY.—Not  
20 later than 90 days after the last day of each fiscal  
21 year, the Secretary shall—

22 (A) complete an audit of the information  
23 described in subparagraphs (B) through (E) of  
24 paragraph (1) contained in reports covering  
25 such fiscal year;

1 (B) submit a report to the appropriate  
2 committees of Congress that includes a sum-  
3 mary of the information submitted pursuant to  
4 paragraph (1), disaggregated by facility; and

5 (C) issue regulations in accordance with  
6 relevant national standards that set minimum  
7 standards for facilities providing medical care  
8 to pregnant noncitizens.

9 (3) PRIVACY.—None of the reports submitted  
10 pursuant to paragraph (1) or (2) may contain the  
11 individually identifying information of any detained  
12 noncitizen or the noncitizen’s health care provider.

13 (4) PUBLIC INSPECTION.—

14 (A) IN GENERAL.—Except as provided in  
15 subparagraph (B), each report submitted under  
16 this subsection shall be made available on a  
17 publicly accessible website of the relevant agen-  
18 cy.

19 (B) FACILITY ADMINISTRATOR.—None of  
20 the reports submitted under paragraph (1) or  
21 (2) that is posted on a publicly accessible  
22 website may contain the name of the facility ad-  
23 ministrator referred to in paragraph (1)(A)(iii).

24 (b) RULEMAKING.—The Secretary shall adopt regula-  
25 tions or policies to implement the requirements under this

- 1 Act at each detention facility managed or overseen by the
- 2 Department of Homeland Security.