

**AMENDMENT**

**OFFERED BY MS. GARCIA OF TEXAS**

Insert in the appropriate place the following:

1 **TITLE \_\_\_\_\_—STOP SHACKLING**  
2 **AND DETAINING PREGNANT**  
3 **WOMEN**

4 **SEC. \_\_\_\_ . DEFINITIONS.**

5 In this title:

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

9 (A) the Committee on Homeland Security  
10 and Governmental Affairs of the Senate;

11 (B) the Committee on the Judiciary of the  
12 Senate;

13 (C) the Committee on Appropriations of  
14 the Senate;

15 (D) the Committee on Homeland Security  
16 of the House of Representatives;

17 (E) the Committee on the Judiciary of the  
18 House of Representatives; and

19 (F) the Committee on Appropriations of  
20 the House of Representatives.

1           (2) COMMISSIONER.—The term “Commis-  
2           sioner” means the Commissioner for 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 for 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 during the 1-year period, or longer, as deter-  
15              mined by the licensed health care provider of the in-  
16              dividual concerned, following delivery, including the  
17              entire period during which the individual is in a  
18              medical facility, birthing center, or infirmary after  
19              birth.

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

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

25                              (i) flex cuffs;

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

10 (B) does not include medical restraints.

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

13 **SEC. \_\_\_\_ . LIMITATION ON DETENTION OF PREGNANT**  
14 **WOMEN AND MOTHERS OF NEWBORNS.**

15 (a) ACCESS TO PREGNANCY TESTING.—The Sec-  
16 retary shall provide every individual being processed into  
17 custody access to pregnancy testing during the initial med-  
18 ical screening.

19 (b) PRESUMPTION OF RELEASE.—

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

22 (A) may not detain, arrest, or take into  
23 custody an individual under any provision of the  
24 Immigration and Nationality Act (8 U.S.C.  
25 1101 et seq.) who is known to be pregnant, lac-

1 tating, or postpartum, pending a decision with  
2 respect to whether the noncitizen is to be re-  
3 moved from the United States; and

4 (B) shall immediately release any detained  
5 noncitizen found to be pregnant.

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

11 (A) under extraordinary circumstances in  
12 which the Secretary makes an individualized de-  
13 termination that credible, reasonable grounds  
14 exist to believe that—

15 (i) such individual poses an immediate  
16 and serious risk of physical harm to oth-  
17 ers; and

18 (ii) enrollment in an alternative to de-  
19 tention program cannot mitigate public  
20 safety threats associated with such indi-  
21 vidual; and

22 (B) if such detention is the only means  
23 available to mitigate such threats.

24 (3) REMOVAL.—If detention is the only means  
25 of effectuating the removal from the United States

1 of a pregnant individual subject to a final order of  
2 deportation or removal, the Secretary, solely for the  
3 purpose of such deportation or removal, may detain  
4 the pregnant individual in temporary housing in ac-  
5 cordance with applicable temporary housing stand-  
6 ards for a period equal to the shorter of—

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

10 (B) 5 days.

11 (c) WEEKLY REVIEW.—

12 (1) IN GENERAL.—The Secretary shall conduct  
13 an individualized review of each noncitizen detained  
14 pursuant to subsection (b)(2) not less frequently  
15 than weekly to determine whether such noncitizen  
16 continues to be subject to detention under such sub-  
17 section. Each such review shall be completed within  
18 72 hours after being initiated.

19 (2) RELEASE.—Not later than 24 hours after  
20 the Secretary determines pursuant to paragraph (1)  
21 that a pregnant noncitizen is no longer subject to  
22 detention under subsection (b)(2), the noncitizen  
23 shall be released from the facility in which the non-  
24 citizen had been detained in accordance with safe re-

1        lease standards. In carrying out such release, an of-  
2        ficer at such facility shall—

3                (A) prepare the noncitizen’s complete med-  
4                ical records, medications, and any supplies re-  
5                quired to maintain the noncitizen’s state of  
6                health until the noncitizen can be seen by a  
7                community health professional; and

8                (B) communicate with the noncitizen’s at-  
9                torney of record, sponsor, or any post-release  
10               service provider as soon as details of the non-  
11               citizen’s planned release are available.

12 **SEC. \_\_\_\_ . HUMANE TREATMENT OF PREGNANT DETAINED**  
13                **NONCITIZENS WHILE IN DETENTION AND**  
14                **CUSTODY.**

15        (a) PROHIBITION ON RESTRAINT OF PREGNANT DE-  
16        TAINED NONCITIZENS.—

17                (1) PROHIBITION.—Except as provided in para-  
18                graph (2), restraints may not be used on a noncit-  
19                izen who is in the physical custody of the Depart-  
20                ment of Homeland Security, including during trans-  
21                port, if the noncitizen is known to be—

22                (A) pregnant, including during labor and  
23                delivery;

24                (B) lactating; or

25                (C) postpartum.

1 (2) EXCEPTIONS.—

2 (A) IN GENERAL.—Notwithstanding para-  
3 graph (1), and subject to subparagraph (B),  
4 use of a restraint on a detained noncitizen de-  
5 scribed in paragraph (1) may be permitted only  
6 in an extraordinary circumstance, except in the  
7 case of a medical contraindication, in which the  
8 facility administrator has ordered the use of the  
9 restraint after making an individualized deter-  
10 mination that—

11 (i) credible, reasonable grounds exist  
12 to believe the detained noncitizen poses an  
13 immediate and serious risk of physical  
14 harm to others; or

15 (ii) reasonable grounds exist to believe  
16 the detained noncitizen presents an imme-  
17 diate and credible risk of escape that can-  
18 not be reasonably minimized through any  
19 other method.

20 (B) REQUIREMENT FOR LEAST RESTRICTIVE  
21 RESTRAINTS.—In the rare event of an ex-  
22 traordinary circumstance described in subpara-  
23 graph (A), only the least restrictive restraint  
24 necessary shall be used, except that—

1 (i) if a doctor, nurse, or other health  
2 professional treating a detained noncitizen  
3 requests that a restraint not be used, the  
4 detention officer accompanying the de-  
5 tained noncitizen shall immediately remove  
6 any restraint; and

7 (ii) under no circumstance shall—

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

10 (II) a wrist restraint be used to  
11 bind the hands of such a detained  
12 noncitizen behind the back of the de-  
13 tained noncitizen or to another indi-  
14 vidual;

15 (III) a detained noncitizen be re-  
16 strained in a face-down position or on  
17 their back; or

18 (IV) any restraint be used on any  
19 detained noncitizen who is in labor or  
20 delivering.

21 (3) RECORD OF EXTRAORDINARY CIR-  
22 CUMSTANCES.—

23 (A) REQUIREMENTS.—If a restraint is  
24 used on a detained noncitizen pursuant to para-  
25 graph (2)(A), not later than 5 days after the

1 date on which the restraint was used, the facil-  
2 ity administrator shall—

3 (i) record in writing the finding that  
4 describes the medical purpose or extraor-  
5 dinary circumstance that dictated the use  
6 of the restraint; and

7 (ii) submit the finding to the Director.

8 (B) RETENTION.—

9 (i) FACILITY.—With respect to a writ-  
10 ten finding under subparagraph (A)(i), the  
11 facility administrator shall—

12 (I) keep the finding on file at the  
13 applicable facility for not less than 5  
14 years after the date on which the re-  
15 straint was used; and

16 (II) make a copy of the finding  
17 available for public inspection on re-  
18 quest, only after making appropriate  
19 redactions so as to protect personally  
20 identifiable information.

21 (ii) U.S. IMMIGRATION AND CUSTOMS  
22 ENFORCEMENT.—The Director shall main-  
23 tain a written finding submitted to the Di-  
24 rector pursuant to subparagraph (A)(ii)  
25 and make such finding available for public

1 inspection only after making appropriate  
2 redactions to protect personally identifiable  
3 information.

4 (b) PROHIBITION ON PRESENCE OF NONMEDICAL  
5 STAFF.—

6 (1) IN GENERAL.—Except as provided in para-  
7 graph (2), nonmedical staff may not be present in  
8 a room in which a pelvic or breast exam, labor, de-  
9 livery (whether vaginal or by cesarean delivery), or  
10 treatment of any other symptom relating to a preg-  
11 nancy of a detained noncitizen is occurring unless  
12 their presence is specifically requested by medical  
13 personnel and only for a duration that is actually re-  
14 quired to fulfill such request.

15 (2) EXCEPTION.—If the presence of nonmedical  
16 staff is requested by medical personnel, the nonmed-  
17 ical staff shall—

18 (A) be of the detained noncitizen's gender  
19 of choice, if practicable; and

20 (B) remain at a reasonable distance from  
21 the detained noncitizen and face toward the de-  
22 tained noncitizen's head to protect the privacy  
23 of the detained noncitizen.

24 (3) USE OF RESTRAINTS.—If a restraint is used  
25 on a detained noncitizen pursuant to subsection

1 (a)(2)(A), an employee of the Department of Home-  
2 land Security shall remain immediately outside the  
3 room at all times so that the employee may promptly  
4 remove the restraint if requested by medical per-  
5 sonnel pursuant to subsection (a)(2)(B)(i).

6 (c) ACCESS TO SERVICES.—

7 (1) U.S. IMMIGRATION AND CUSTOMS ENFORCE-  
8 MENT CUSTODY.—A detained noncitizen in the cus-  
9 tody of U.S. Immigration and Customs Enforcement  
10 shall have access to health care services, including  
11 comprehensive counseling and services relating to re-  
12 productive health care and pregnancy, including—

13 (A) routine and specialized prenatal care,  
14 including adequate nutrition and exercise, HIV  
15 testing and treatment, and prenatal vitamins  
16 and vaccines;

17 (B) labor and delivery;

18 (C) treatment for complications from preg-  
19 nancy;

20 (D) substance use disorder treatment;

21 (E) postpartum physical and mental health  
22 care, including postpartum reversible contracep-  
23 tive methods;

24 (F) no-cost supply of menstrual hygiene  
25 products;

1 (G) lactation services; and

2 (H) family planning, continuation of pre-  
3 detention contraceptive methods, and abortion  
4 services.

5 (2) U.S. CUSTOMS AND BORDER PROTECTION  
6 CUSTODY.—The Commissioner shall ensure that  
7 minimum standards of care are met for pregnant de-  
8 tained noncitizens who are in the custody of U.S.  
9 Customs and Border Protection.

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

16 (e) MEDICAL CENTER ARRANGEMENTS.—Each facil-  
17 ity administrator shall maintain—

18 (1) an arrangement with the nearest maternity  
19 hospital and ensure facility staff know where to take  
20 pregnant detained noncitizens in case of emergency;  
21 and

22 (2) a policy to ensure the provision of proper  
23 care if a detained noncitizen cannot be moved with  
24 immediacy to a medical center.

1 **SEC. \_\_\_\_ . NOTICE OF RIGHTS AND TRAINING.**

2 (a) NOTICE OF DETAINED NONCITIZEN RIGHTS.—

3 The Secretary shall provide to each detained noncitizen,  
4 in a language or manner that such noncitizen can under-  
5 stand, notice of the detained noncitizen's rights under this  
6 title.

7 (b) TRAINING FOR DEPARTMENT OF HOMELAND SE-  
8 CURITY EMPLOYEES.—At the time of hiring, and annually  
9 thereafter, the Secretary shall provide training regarding  
10 the requirements under this title to each employee of the  
11 Department of Homeland Security who is involved in the  
12 detention or care of a pregnant detained noncitizen or a  
13 postpartum parent of a newborn who is being detained  
14 pursuant to chapter 4 of title II of the Immigration and  
15 Nationality Act (8 U.S.C. 1221 et seq.).

16 **SEC. \_\_\_\_ . REPORTS; RULEMAKING.**

17 (a) REPORTS.—

18 (1) REPORTS BY FACILITY ADMINISTRATORS.—

19 Not later than 30 days after the end of each cal-  
20 endar quarter, the facility administrator of each de-  
21 tention facility in which 1 or more pregnant nonciti-  
22 zens were detained during such quarter shall submit  
23 a written report to the Secretary that includes, with  
24 respect to the facility during such quarter—

25 (A) an account of every instance of the use  
26 of a restraint on a pregnant detained noncitizen

1 during pregnancy, labor, or postpartum recovery,  
2 during pregnancy, labor, or postpartum recovery, including—

3 (i) the type of restraint;

4 (ii) the justification for the use of  
5 such restraint; and

6 (iii) the name of the facility administrator who made the individualized determination pursuant to section  
7 \_\_\_\_\_(a)(2)(A);

8 (B) the number of pregnant noncitizens  
9 held at such facility;

10 (C) the number of released pregnant noncitizens who were held at such facility;

11 (D) the average length of detention of pregnant noncitizens;

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

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

14 (G) the number of pregnant noncitizens who gave birth while detained and a description of the outcomes of any pregnancies that ended in custody, including any pregnancy that resulted in a live birth, a stillbirth, a miscarriage, an abortion, an ectopic pregnancy, maternal

1 morbidity, maternal death, neonatal death, or  
2 preterm birth.

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

6 (A) complete an audit of the information  
7 described in subparagraphs (B) through (E) of  
8 paragraph (1) contained in reports covering  
9 such fiscal year;

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

14 (C) issue regulations in accordance with  
15 relevant national standards that set minimum  
16 standards for facilities providing medical care  
17 to pregnant noncitizens.

18 (3) PRIVACY.—None of the reports submitted  
19 pursuant to paragraph (1) or (2) may contain the  
20 individually identifying information of any detained  
21 noncitizen or the noncitizen's health care provider.

22 (4) PUBLIC INSPECTION.—

23 (A) IN GENERAL.—Except as provided in  
24 subparagraph (B), each report submitted under  
25 this subsection shall be made available on a

1 publicly accessible website of the relevant agen-  
2 cy.

3 (B) FACILITY ADMINISTRATOR.—None of  
4 the reports submitted under paragraph (1) or  
5 (2) that is posted on a publicly accessible  
6 website may contain the name of the facility ad-  
7 ministrator referred to in paragraph (1)(A)(iii).

8 (b) RULEMAKING.—The Secretary shall adopt regula-  
9 tions or policies to implement the requirements under this  
10 title at each detention facility managed or overseen by the  
11 Department of Homeland Security.

