



“They Left Us with Marks:” The Routine Handcuffing and Shackling of Immigrants in ICE Detention

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Introduction

"The first time I was on a plane is when I was taken from Texas to Miami. I didn't like the experience because I was handcuffed and with chains around my waist and my feet shackled for the whole time after we left the *"hielera"* (ice box) until we arrived in Miami. I felt so ashamed. When I asked the officer why this had to happen, I was told those were the rules."

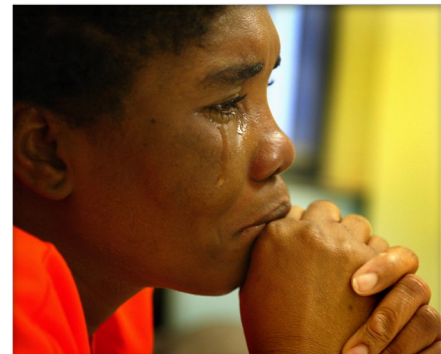
-Amy, age 17, unaccompanied minor

For years, Immigration and Customs Enforcement (ICE) officials have engaged in the unconscionable and arguably unconstitutional practice of indiscriminately shackling detainees who are in civil custody. Persons in immigration detention, including pregnant women, are routinely restrained when taken off site to a medical visit, transferred to a different detention center either by bus or plane, evacuated in the case of an emergency, or deported from the United States by ICE.

When detainees are sent to see a medical specialist located outside the detention center, no matter their medical condition, they are required in most cases to sign a release agreeing to be handcuffed and shackled during transport. Absent that concession, they are denied the appropriate medical care, presenting them with Hobson's Choice -- their dignity or their health.

Even unaccompanied minors, children who generally flee their violence ridden countries alone, have been handcuffed and shackled when transported from the border to shelters. In some cases, detained immigrants have been brought to meet with their lawyers in handcuffs although they posed no danger to anyone.

The routine use of restraints on persons in ICE custody is especially concerning given the alarming increase in the number of immigrants now being detained and deported.¹ Under the Trump administration, arrests of immigrants skyrocketed.² The vast majority of immigrants have no criminal record and have never been handcuffed or shackled before.ⁱ



Exacerbating matters, countless detained immigrants have experienced trauma either in their home country or here in the U.S., and many are survivors of sexual assault and domestic violence seeking protection pursuant to U.S. laws.³ They often suffer from posttraumatic stress dis-

i. By 2014, two thirds of the nearly two million immigrants deported under the Obama administration had no criminal records, or only minor infractions, like traffic violations. See Sarah Cohen and Ginger Thompson, "More Deportations Follow Minor Crimes, Records Show," *New York Times*, April 6, 2014, https://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?_r=1.

order (PTSD) or other related illnesses and are further traumatized when transferred to outside facilities for mental healthcare and forcibly restrained throughout their stay.⁴

The routine use of restraints on pregnant women is particularly troubling. In August 2016, ICE issued a memo that “absent extraordinary circumstances or the requirement of mandatory detention, pregnant women will generally not be detained.”⁵ However, a December 2017 ICE memo ordered that officers now treat pregnant detainees like any other, stating that the detention of pregnant women “will serve to better align with the President’s [2017] Executive Order” which seeks to increase the detention and deportation of immigrants.⁶ According to ICE data, since this policy change in December 2017, ICE has detained 506 pregnant women.⁷ In response to this new directive, Representative Zoe Lofgren (D.-Cal.), Ranking Member of the House Judiciary Immigration and Border Security Subcommittee, issued a statement that included:

The so-called “pro-life” Trump Administration's decision to detain pregnant women is reckless and shameful. Pregnant women need specialized medical care throughout their pregnancy and immigration detention facilities are not equipped to provide specialized obstetric care... Today, the Trump Administration ignored these concerns and issued a policy that prioritizes mass deportation and mass detention over common sense and humanity. This is an anti-woman, anti-immigrant and anti-family policy. It is mean spirited, unnecessary and should be reversed immediately.⁸

Moreover, ICE’s own detention standards require that pregnant women and others who have recently given birth should never be placed in restraints, especially restraint belts around their waist, unless they are deemed a security threat.⁹ However, pregnant women are routinely kept in custody and shackled, particularly when taken to their medical appointments or to the hospital for mental healthcare post-delivery.ⁱⁱ

The American Medical Association (AMA) refers to the practice of handcuffing and shackling incarcerated pregnant women in criminal custody as “barbaric” and “medically hazardous,” citing the very real health risks handcuffs and shackles can cause the mother and her fetus.¹⁰ To shackle pregnant immigrant women in ICE custody not facing criminal charges is even more egregious.

The unwarranted, routine shackling of immigrants in ICE custody criminalizes them solely based on their immigration status. Treating vulnerable immigrants this way is a form of oppression, further traumatizing them, unnecessarily imposing additional psychological harm, and negatively impacting their ability to fight removal.¹¹ A common complaint from immigrants and their families over the years has been that ICE detainees are dehumanized rather than being treated like fellow human beings. This practice must be exposed and examined or it will continue to needlessly harm those in ICE custody and demean our system of justice.

ii. See, ACLU’s complaint to DHS Office of Civil Rights and Civil Liberties and Office of Inspector General on the treatment of pregnant women in ICE custody: “U.S. Immigration and Customs Enforcement’s Detention and Treatment of Pregnant Women,” (letter, Washington, D.C.: ACLU, American Immigration Council, Women’s Refugee Commission, AILA, Center for Gender and Refugee Studies, Northwest Immigrant Rights Project, and RAICES, last updated November 13, 2017), <https://www.aclu.org/legal-document/pregnant-women-ice-custody-complaint-dhs-office-civil-rights-and-civil-liberties-and>.

Policies and Practices

"The jail was a real experience, especially since I had never been arrested before. I was shocked by what it was like. This was my first time in handcuffs; my first time experiencing all of it."

- Raymond, a Bahamian man and father of three children

ICE directives promulgated in 2004 and later reiterated in a 2008 memo as well as ICE's 2011 Performance-Based Detention Standards (PBNDS) require that officers make individualized determinations about the need for restraints, particularly during the transport of detained immigrants.¹² Pursuant to ICE directives, there must be an "articulated reason" for the use of handcuffs and leg irons that takes into consideration the detainee's criminal history, behavioral patterns, potential influence of drugs/alcohol, physical condition, age, sex, and medical condition.¹³

Under these standards, officers were also required to consider the length of travel, destination, and potential exposure to the public.¹⁴ Furthermore, determinations of who should be restrained and with what restraints were to be documented, creating a system of accountability and transparency. ICE standards also dictated that transporting officers would not handcuff women, especially pregnant women and minors, except in exceptional circumstances. Similarly, the 2011 PBNDS make clear that the use of force or restraints on detained immigrants who suffer from mental illness should be determined by, or in consultation with, medical and mental health staff rather than by the ICE officer alone.¹⁵



Despite these precedents, in 2012, ICE issued a memo calling for the blanket use of restraints during the transportation of detainees absent any stated reason for the abrupt departure in policy, ignoring the case by case analysis of the need for restraints.¹⁶ ICE has also failed to advise local law enforcement agencies holding individuals for immigration purposes about their own requirements for the treatment of pregnant women, including that they should not shackled.¹⁷

Narratives

“Estefania’s” Experience

“The handcuffs and shackles were put on so tight that they left us with marks. I and many other women had swollen ankles after wearing the shackles for many days. We were treated as if we were criminals. It was a very hard experience to go through. We are human beings and deserve to be safe too.”

Estefania, a Costa Rican woman and survivor of gender-based violence, was detained at the Broward Transitional Center (BTC), a facility in Broward County, Florida, run by the private prison company GEO. Estefania eventually agreed to voluntary departure, but her flight back to her native country would not be her first trip with ICE Air Operations.¹⁸

During the evacuation of BTC as Hurricane Irma approached South Florida in September 2017, detainees were transported in handcuffs attached to a chain at the waist and were forced to wear leg irons. After the restraints were removed upon arrival in Texas, Estefania and several other detainees suffered swollen ankles and bruised wrists. Wearing these restraints also posed challenges to their ability to attend to their basic needs. During the flights, guards released only one hand from the detainee’s cuffs when they requested to use the bathroom, an unnecessary and degrading impediment to their ability to relieve themselves. Detainees were also forced to eat with their handcuffs on, which were chained to the waist, compelling many women to help feed the person seated next to them when they could not manage to bring the food to their own mouths.

“Teresa’s” Experience

“What can we do about the trauma that women here in detention face after having been shackled, restrained, and humiliated by ICE officers?”

Teresa was arrested in Venezuela for protesting against the country’s president, Nicolas Maduro, which resulted in government officials targeting her family. She was kicked and beaten so badly by a Venezuelan official that she had to be hospitalized, and officers later placed tear gas bombs in her mother’s home to further terrorize the family. Teresa fled to the US seeking asylum. Upon arrival at Miami International Airport (MIA), she was questioned and subsequently detained at BTC.

In anticipation of Hurricane Irma, Teresa, like all BTC detainees, was evacuated from Florida to a Texas jail. During the day-long evacuation including the bus trip to the airport, she was shackled at her hands, belly, and feet. Although she was menstruating, ICE guards refused her requests to be released from the handcuffs, denying her the ability to change her sanitary pad. “I was left covered in blood, like a newborn baby. I left a stain on my seat. They would not let one of my hands out so that I could change my pad...It was humiliating...The whole experience was practi-

cally torture.” To this day, Teresa’s experience traumatizes her and recalling the shackling and her inability to take care of her basic needs still brings tears to her eyes.

“Bruna’s” Experience

“When you are handcuffed and shackled, the chain is very tight on the belly. It can hurt, but I gave up on asking them to not cuff me because I was pregnant.”

Bruna, a domestic violence survivor from Brazil, was pregnant when she was arrested in Orlando for trespassing. At the time of her arrest, she had no previous criminal history and was fleeing her abusive fiancée, who had just been released from jail. ICE picked her up from the Orlando County Jail and transported her to BTC.

Struggling to live in ICE detention with her complicated pregnancy, history of PTSD and depression, and having forgone taking medications for these conditions because of her pregnancy, Bruna was transferred to Miami’s Larkin Hospital for mental healthcare. Her feet were shackled not only during transport to and from Larkin, but during her entire stay at the hospital. One day while still pregnant, Bruna fell over her leg chains while walking around the facility. Bruna told her lawyer, “I feel humiliated in detention.”

Bruna’s humiliation at the hands of ICE officers continued during the evacuation of BTC in preparation for Hurricane Irma. At the time, Bruna had just learned that her pregnancy was ectopic and she underwent medical treatment to terminate the pregnancy. On board the plane to an unknown destination, she became anxious about being restrained and asked one of the guards how they would be able to uncuff all the detainees in the event of an emergency. Bruna was told to “shut up,” and when she asked, “Don’t we have any rights?”, the officer told her that she had the “civil right to shut up.”

“Carolina’s” Experience

“Whenever ICE transported me, I was handcuffed at the hands and feet. At Larkin [hospital in Miami], I was always cuffed at the feet, even when I was sleeping. I couldn’t turn or move when I was trying to sleep. I felt really, really bad when they handcuffed and shackled me...I only wanted to cry for help.”

Carolina, a 32-year old mother from Mexico, was seven months pregnant when she was arrested in Tampa. She was kept in custody by the Hillsborough County Sheriff’s office for weeks due to an ICE hold, and when her family tried to post bond, they were told by an officer at the jail she would not be released. Carolina had no criminal history other than traffic offenses. Her pregnancy was a complicated one since she had miscarried a twin earlier on in the pregnancy. Yet, when she went into labor at the county jail and was taken to the hospital by ambulance, one of her hands was shackled to the gurney while the other arm had an IV. She was four centimeters dilated.

ed and gave birth shortly after admission to the hospital. Two local police officers were also in the ambulance with her.

In May 2017, when Carolina was transferred to BTC from the county jail, she began to suffer from severe postpartum depression, which undoubtedly was exacerbated by the fact that she had only been allowed two days with her newborn daughter before the baby was turned over to Carolina's relatives. Claiming concern that Carolina was suicidal, ICE transferred her to Miami's Larkin Hospital for psychiatric evaluation, where she was shackled twenty-four seven at her feet, making it hard for her to sleep and walk.

Throughout her childhood in Mexico, Carolina was sexually abused by relatives. Studies show that women like her, who have histories of childhood sexual abuse, process the experience of being physically restrained in a hospital as a reenactment of their original trauma and have reported traumatic emotional reactions such as fear, rage, and anxiety.¹⁹

“Nora's” Experience

“The most difficult part was that being chained like this reminded me of my father who was kidnapped and restrained by guerillas back in [my home country]. He was forced to wear shackles like my own...At night, I would cry and think to myself, God, 'what have I done wrong to be in this situation?'”

A rape victim suffering from depression, Nora was transferred from BTC to Miami's Atlantic Shores Hospital (ASH) for eight days after having suicidal ideations. During her hospitalization, Nora's was forced to wear leg irons. Her shackles were only removed when officers stood guard as she bathed. Nora remembers:

They never took the shackles off my feet...I felt like a naive little girl for believing ICE when they told me they would remove them...I felt so horrible; I cried of helplessness and pain...I had two guards who were at my side day and night...They scolded me and treated me as if they were my owners, my parents...The other patients at [ASH] stared at me as I wore these shackles; I felt like a criminal and felt that I needed to explain to them that I wasn't a bad person.

When Nora was young, her father was kidnapped, shackled, and killed by guerillas, and Nora was threatened based on her religious affiliation. Her own shackling while in ICE custody was a painful reminder of her family's collective trauma.

The Unjustifiable and Detrimental Effects of Current ICE Practice

“Restraints both create physical sensations and are imbued with symbolic meaning [...] [Immigrants] in removal proceedings are certainly aware that chains represent powerlessness while physically seeing, feeling, and hearing the chains on their bodies.”²⁰

- Fatma E. Marouf, Texas A&M University School of Law, 2015

Given the perniciousness and intrusiveness of restraints, especially considering the serious psychological ramifications that can result, the lack of any justification for shackling immigrants in detention becomes not just unreasonable, but outrageous. It must be asked, why is ICE using such extreme measures to restrain immigrants who are not serving a criminal sentence and cannot be deemed a security risk? Perhaps ICE is restraining everyone simply because it can and knows so few will dare complain.

The blanket use of restraints on immigrants seeking protection under our laws fails to adhere to even the basic constitutional protections afforded to criminals.ⁱⁱⁱ Ironically, it is often better to be in criminal custody than in civil immigration custody. The fact that we allow our immigration laws and enforcement practices to operate without the requisite constitutional protections "endangers the privacy and safety of all of us."²¹

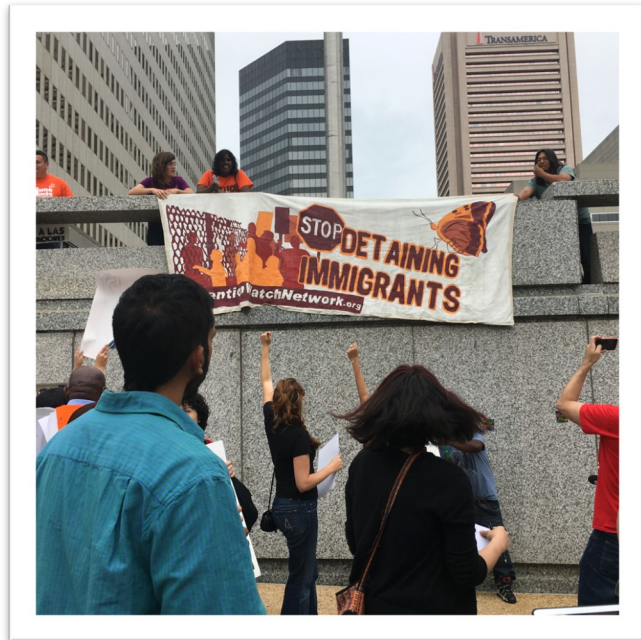
In the context of an arrest of a *criminal suspect*, courts use a proportionality analysis to determine whether the amount of force used to effectuate an arrest is excessive.^{iv} The reasonableness of the force used to affect a particular seizure is determined by “careful[ly] balancing[...]‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”²² Courts have long recognized the demeaning

iii. Bearing in mind that these standards are applied to potential criminals, and not immigration detainees, the state’s use of force necessitates a focus on the governmental interests at stake that include factors such as: “(1) the severity of the crime at issue, (2) whether the suspect pose[d] an immediate threat to the safety of the officers or others ... (3) whether he [was] actively resisting arrest or attempting to evade arrest by flight,” and any other ‘exigent circumstances [that] existed at the time of the arrest.’” Additional factors such as age, gender, relative size and strength and whether a person has a condition that could be worsened if cuffed should be considered. *See, Headwaters Forest*, 240 F.3d at 1198–99 (quoting *Chew*, 27 F.3d at 1440–1441 & n. 5). These factors, however, are simply a means by which to determine objectively “the amount of force that is necessary in a particular situation.” *See Graham*, 490 U.S. at 396–97, 109 S.Ct. 1865

iv. In *Alexander v. City and County of San Francisco*, essence of the *Graham* objective reasonableness analysis is as follows: “[t]he force which [i]s applied must be balanced against the need for that force.” *See, Alexander v. City and County of San Francisco*, 29 F.3d 1355, 1367 (9th Cir.1994). *See also, Liston v. County of Riverside*, 120 F.3d 965, 976 (1997).

and unsettling effect of using restraints on defendants in criminal cases, including the ways being shackled can impair a defendant's ability to participate in their legal proceedings.^v Placing an individual in handcuffs during their court proceedings can prevent them from exercising their constitutional rights, is likely to prejudice jurors, and undermines the defendant's dignity.

There are also serious physical and psychological ramifications to being forcibly restrained. In an article in the Baylor Law Review, "The Unconstitutional Use of Restraints in Removal Proceedings," Professor Fatima E. Marouf reviews studies on the cognitive and behavioral impact of restraints and notes that²³ "acute restraint stress," a model used to analyze both emotional and autonomic responses to stress in animals, helps illustrate the effect of restraints on immigrants in detention.²⁴ In one such study, when a rat is placed in a container that restricts its movement, various changes occur including hormonal changes, elevated blood pressure, and increased heart rate and body temperature.²⁵ Other impacts of restraint include fear conditioning²⁶ as well as cognitive and neurological changes like anxiety, impaired memory, and depression.²⁷



It is reasonable to assume that immigrants in detention, facing an unknown and potentially life-threatening future, would experience similar biological changes, especially if they have already experienced trauma and depression sufficient to warrant ICE's referral to mental health specialists. Numerous studies make clear that in psychiatric hospital settings, patients often express "helplessness, powerlessness, confusion, loneliness, desolation, and humiliation" about the experience of being restrained.²⁸ These same feelings are reflected in the stories included in this report, as detainees detail their deterioration and feelings of powerlessness while in ICE detention.

v. *People v. Fierro*, 821 P.2d 1302, 1320-22 (1991). The Supreme Court of California addressed shackling of defendants during proceedings before a jury in detail in a 1976 decision called *People v. Duran*. 545 P.2d 1322, 1322-23. *Duran* discussed how shackling may prejudice jurors, but also noted "the affront to human dignity, the disrespect for the entire judicial system which is incident to unjustifiable use of physical restraints, as well as the effect such restraints have upon a defendant's decision to take the stand." *Id.* at 1327. In 1981, a California appellate court extended *Duran's* reasoning to a preliminary hearing before a judge, explaining that "[r]espect for the dignity of the individual and the court are values to be preserved whether or not a jury is present." *Solomon v. Superior Court*, 177 Cal. Rptr. 1, 3 (Ct. App. 1981). The court therefore concluded that physical restraints could not be applied at a preliminary examination without a showing of good cause.

Conclusion

“As an attorney, I always try to empower my clients so they are invested in their cases. Here [at Glades County Detention Center], my clients cannot even stretch out their arms or shake my hand without discomfort or even sign their applications for relief under the Convention Against Torture without straining. Shackling my clients disrespects their humanity, [making] them feel small and [stripping] them of hope and their own desire to fight.”

- Andrea Crumrine, AI Justice Greenberg Traurig Holly Skolnick
Equal Justice Works Fellow

The weighty, symbolic meaning of restraints cannot be underestimated. When detained immigrants are restrained, like during transport, they feel the tight cuffs around their wrists, which leave red marks and indentations on their skin, and the heavy chains at their feet restrict their every movement and clink as they drag across the floor, a reminder that while in ICE detention they too often are treated like common criminals. In the eyes and minds of many, these chains signify the ongoing enslavement, oppression, and dehumanization of black and brown communities.²⁹

ICE officials are inflicting harsh and punitive measures on immigrants that are inappropriate for civil detention and without alleged provocation. The use of restraints is not justified by either an assessment of their risk to the security and safety of the public and the officers who guard them, or by any data or statistics that would require all detained immigrants to be considered flight risks. The non-discriminant, across-the-board use of restraints on detainees also runs counter to ICE policy, flies in the face of AMA guidelines, defies international standards dictating that civil detention should not be punitive in nature, and infringes upon the basic rights and interests of detainees.³⁰

While it may be easier for ICE to adopt a blanket policy on the use of restraints without tailoring it to the individual situations of those it detains, mere expediency does not make it reasonable or constitutional. The decision to restrain ICE detainees must be made on a case-by-case basis and with rational justifications.

Detainees' sad and desperate pleas must be heard by those with the power to affect change and others who believe in the just and humane treatment of those least likely to be in a position to advocate for themselves. ICE needs to remedy this urgent matter with haste.

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