

## PREGNANT WOMEN IN CHAINS

BY SAVANNA JONES\*

In 2018, a twenty-seven-year-old woman went into labor while detained in a New York holding cell on a misdemeanor charge.<sup>1</sup> She was later shackled to her hospital bed by her wrists and her ankles during labor, and only after her doctors insisted for nearly an hour did the officer finally remove her ankle restraints.<sup>2</sup> She was still forced to give birth with one arm handcuffed to her hospital bed.<sup>3</sup> That same year, in Detroit, Michigan, Siwatu-Salama Ra—who, at seven months pregnant, was denied bail by two separate judges despite the fact that she had no criminal record—was handcuffed during transport to a Michigan hospital and during her labor.<sup>4</sup> To add an additional layer of humiliation, armed guards clad in bullet proof vests occupied her delivery room during both labor and delivery of her baby.<sup>5</sup> In 2017, Sophia Casias, seven months pregnant with her hands cuffed and feet bound, was led around a detention center in San Antonio, Texas by a guard holding a chain connected to her handcuffs.<sup>6</sup> Unable to maintain her balance—a concern for many women at this late stage of pregnancy<sup>7</sup>—she suffered a fall onto the concrete floor which could have endangered both her and her child’s safety.<sup>8</sup> The guards who had chained her only harassed and harangued her in response to this fall.<sup>9</sup>

---

\* © 2021, Savanna Jones.

<sup>1</sup> Ashley Southall, *She Was Forced to Give Birth in Handcuffs. Now Her Case Is Changing Police Rules*, N.Y. TIMES (Jul. 3, 2019), <https://www.nytimes.com/2019/07/03/nyregion/nypd-pregnant-women-handcuffs.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Ashley Southall & Benjamin Weiser, *Police Forced Bronx Woman to Give Birth While Handcuffed, Lawsuit Says*, N.Y. TIMES (Dec. 6, 2018), <https://www.nytimes.com/2018/12/06/nyregion/pregnant-inmate-shackled-lawsuit.html>.

<sup>4</sup> Tresa Baldas, *Detroit mom, activist forced to give birth in shackles cuts deal to go free*, DETROIT FREE PRESS (Jan. 31, 2020, 11:11 AM), <https://www.freep.com/story/news/local/michigan/detroit/2020/01/31/siwatu-salama-ra-prison-gun/2860460001/>. Even “as she contracted, cried and screamed, the chains stayed on.” *Id.*

<sup>5</sup> See Zoë Schlanger, *Should a pregnant person ever go to prison?*, QUARTZ (Apr. 6, 2019), <https://qz.com/1587102/what-its-like-to-give-birth-in-a-us-prison/>.

<sup>6</sup> Lori Teresa Yearwood, *Pregnant and shackled: why inmates are still giving birth cuffed and bound*, THE GUARDIAN (Jan. 24, 2020), <https://www.theguardian.com/us-news/2020/jan/24/shackled-pregnant-women-prisoners-birth>.

<sup>7</sup> As a pregnant person’s stomach expands, their center of gravity shifts forward which makes it harder for them to stay upright. See *Falling Accidentally During Pregnancy*, WHAT TO EXPECT (Sept. 15, 2018), <https://www.whattoexpect.com/pregnancy/accidental-fall>. Also, their body releases a hormone—Relaxin—which loosens their joints and can add to instability on their feet. *Id.* So, adding ankle chains to the mix can understandably further unbalance an already precarious individual. See *id.*

<sup>8</sup> Yearwood, *supra* note 6.

<sup>9</sup> Yearwood, *supra* note 6. After she fell, Casias said the guard grabbed her by the hair and screamed, “Bitch, get up ... This is what happens when you are a fucking junkie. You shouldn’t be using drugs or you wouldn’t be in here.” *Id.*

Unfortunately, the experiences of these women<sup>10</sup> are not unique and in fact, are commonplace throughout many state penal systems.<sup>11</sup> Despite some successful reform efforts at the state and federal level,<sup>12</sup> many states still permit pregnant women in their custody to be shackled while transported during pregnancy, through active labor, and in the postpartum recovery period.<sup>13</sup> The primary justifications for the practice revolve around proclaimed safety considerations, such as the possible threat of harm to correctional officers or the concern that the inmate might try to escape during transport.<sup>14</sup> But these callous restraint practices are merely a remnant of a one-size-fits-all prison system designed specifically for violent male offenders,<sup>15</sup> and are not logically applicable in the vast majority of cases involving pregnant women: first, most incarcerated women are convicted of nonviolent offenses,<sup>16</sup> and second, the physical condition of a woman during labor and pregnancy makes escape highly unlikely.<sup>17</sup>

The shackling of pregnant incarcerated women is not only morally abhorrent and unnecessary, but also likely unconstitutional under the Eighth Amendment.<sup>18</sup> Due to a patchwork of state and federal laws, and the failure of many state penal systems to take proactive steps to abolish these policies, there still exists a significant risk of harm to both the woman and fetus, shedding further light on a codified disregard for the lives of incarcerated women and their children. Thus,

---

<sup>10</sup> For the purpose of this Article, the term “women” or “woman” and the pronouns “she/her” will be used when discussing the plight of pregnant individuals in the prison system. This is not to say that other individuals capable of pregnancy such as nonbinary people, transgender men, or those who otherwise identify as female do not share in these experiences in prison. However, their experiences are not well-documented or reported. Further, the particular problems a pregnant transgender man, for example, may face while in prison could be very different due to the intersections of their identity, and thus, is likely deserving of its own article.

<sup>11</sup> As of January 2020, twenty-three states did not have laws against shackling of pregnant inmates. *See* Yearwood, *supra* note 6.

<sup>12</sup> *See The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers*, ACLU (Oct. 10, 2012), [https://www.aclu.org/sites/default/files/field\\_document/anti-shackling\\_briefing\\_paper\\_stand\\_alone.pdf](https://www.aclu.org/sites/default/files/field_document/anti-shackling_briefing_paper_stand_alone.pdf).

<sup>13</sup> Jennifer G. Clarke & Rachel E. Simon, *Shackling and Separation: Motherhood in Prison*, AMA J. OF ETHICS (Sept. 2013), <https://journalofethics.ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09>. Further, according to inmate and women’s rights advocates, several states that do have policies, but not laws, against shackling have left incarcerated pregnant women without any real protections against the dehumanizing treatment by failing to codify the practice. *See* Lindsay Whitehurst, *State weighs bans on shackling jailed moms during childbirth*, AP (Mar. 13, 2019), <https://apnews.com/article/8e3ab1726aaa4b0696bb86fd4946cb42>.

<sup>14</sup> Clarke & Simon, *supra* note 13.

<sup>15</sup> *See id.* This is, of course, not to say that male inmates convicted of violent crimes should be subject to more harsh or inhumane treatment while in custody, but, rather, is meant to serve as an explanation for why these shackling policies exist in the first place.

<sup>16</sup> According to the American Civil Liberties Union (ACLU), over the last twenty years, only 18 percent of women in prison have been convicted of a violent crime. *See Facts About the Over-Incarceration of Women in the United States*, ACLU (last visited Jan. 11, 2021), <https://www.aclu.org/other/facts-about-over-incarceration-women-united-states>.

<sup>17</sup> *See* Lindsay Whitehurst, *State weighs bans on shackling jailed moms during childbirth*, AP (Mar. 13, 2019), <https://apnews.com/article/8e3ab1726aaa4b0696bb86fd4946cb42>.

<sup>18</sup> *See The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers*, *supra* note 12.

there is an urgent need to eliminate this barbaric practice by any legal means necessary—either legislatively or in the courts.<sup>19</sup>

## I. The Rise of Shackling Incarcerated Women

The number of incarcerated women has increased exponentially in recent decades, particularly in state facilities.<sup>20</sup> From 1980 to 2016, the number of incarcerated women increased more than 700 percent.<sup>21</sup> Unfortunately, there is no nationwide database tracking the number of pregnant women arrested, jailed, or imprisoned each year.<sup>22</sup> The Bureau of Justice Statistics last collected data on incarceration rates of pregnant women sixteen years ago, finding that five percent of women in local jails were pregnant when admitted.<sup>23</sup> A more recent survey of twenty-two state prison systems and all federal prisons found a similar pregnancy rate; roughly 3.8 percent of women in their sample were pregnant when admitted to the participating facilities from 2016-2017.<sup>24</sup> However, these statistics are somewhat misleading. While the percentage rate has remained stable, thousands of more women have been incarcerated since the early 2000s, so the *total number* of imprisoned pregnant women has grown.<sup>25</sup>

As the number of incarcerated women grows, so too does the need for policy interventions to prohibit the shackling of pregnant women, which not only violates their personal dignity but is also wholly unnecessary.<sup>26</sup> For example, many women find themselves handcuffed, with chains across their waists, and shackled to the floor of the transport vehicle when travelling to the hospital while pregnant, no matter if the hospital visit is for a routine check-up, delivery, or an emergency.<sup>27</sup> Even in the delivery room, many women remain shackled to “the bed by their ankles while they give birth,” sometimes with armed guards overseeing the delivery.<sup>28</sup>

So, why all of this security? According to a 2019 survey on the treatment of incarcerated pregnant women, sixty-one percent of respondents revealed that “the reason given for shackling was not that the prisoners posed a safety risk to others, or a flight risk, but simply because there was a rule or protocol supporting the shackling.”<sup>29</sup> Correctional facilities initially began shackling inmates during

---

<sup>19</sup> See *The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers*, *supra* note 12.

<sup>20</sup> See *Incarceration of Women is Growing Twice as Fast as that of Men*, EQUAL JUST. INITIATIVE (May 11, 2018), <https://eji.org/news/female-incarceration-growing-twice-as-fast-as-male-incarceration/>.

<sup>21</sup> *Id.*

<sup>22</sup> Southall, *supra* note 1.

<sup>23</sup> Roxanne Daniel, *Prisons neglect pregnant women in their healthcare policies*, PRISON POL. INITIATIVE (Dec. 5, 2019), <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See *Incarceration of Women is Growing Twice as Fast as that of Men*, *supra* note 20.

<sup>27</sup> Schlanger, *supra* note 5.

<sup>28</sup> *Id.*

<sup>29</sup> Yearwood, *supra* note 6. This data was collected from a study of care providers who had cared for incarcerated women while they were pregnant or postpartum. See *id.*

transport to prevent escape and prevent physical harm to correctional staff or others.<sup>30</sup>

But of course, it is absurd to think that an incarcerated woman would make her great escape during active labor. Unsurprisingly, the American Psychological Association (APA) found there is “no record of escape for any incarcerated woman who was not restrained during labor.”<sup>31</sup> Further, a majority of women are incarcerated for nonviolent offenses,<sup>32</sup> and are unlikely to lash out and assault a hospital worker. Clearly, these harmful policies are not based on genuine security concerns, but, rather, serve as another example of the inhumane conditions of confinement to which the United States subjects its prisoners.

Not only is there no security purpose for shackling pregnant women—but, moreover, there is strong evidence that the policy is dangerous to both the woman and her child. First, restraining women during pregnancy increases the potential for injury from an accidental trip or fall.<sup>33</sup> Further, restraints during labor can prevent a woman from assuming certain positions to ease her pain and birth her child.<sup>34</sup> Most critically, the American College of Obstetricians and Gynecologists released a statement concluding that:

“physical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to assess and evaluate the physical condition of the mother and fetus, and . . . overall [puts] the health and lives of the women and unborn children at risk.”<sup>35</sup>

Additionally, women forced into these situations do not emerge psychologically unscathed. According to the APA, women subjected to restraint during labor reported “severe mental distress, depression, anguish, and trauma.”<sup>36</sup> Michele Aldana, whose wrists and ankles were bleeding from her shackles affixed through the duration of a thirty-hour labor, explained, “I felt like a farm animal.”<sup>37</sup> Importantly, this humiliation and degradation could impact incarcerated women’s ability to get the best medical care available because she may feel unable to advocate for herself due to that shame and fear;<sup>38</sup> alternatively, the attending

---

<sup>30</sup> *Id.*

<sup>31</sup> *Shackling of Pregnant Women in Jails and Prisons Continues*, EQUAL JUST. INITIATIVE (Jan. 1, 2020), <https://eji.org/news/shackling-of-pregnant-women-in-jails-and-prisons-continues/>.

<sup>32</sup> *Id.*

<sup>33</sup> *An “Act to prohibit the shackling of pregnant prisoners” model state legislation*, AM. MED. ASS’N 1 (2015), <file:///Users/savannajones/Downloads/shackling-pregnant-prisoners-issue-brief.pdf>.

<sup>34</sup> Clarke & Simon, *supra* note 13.

<sup>35</sup> *Id.*

<sup>36</sup> Yearwood, *supra* note 6.

<sup>37</sup> Alexa Richardson, *Shackling of Pregnant Prisoners Is Ongoing*, BILL OF HEALTH (Mar. 4, 2020), <https://blog.petrieflom.law.harvard.edu/2020/03/04/shackling-of-pregnant-prisoners-is-ongoing/>.

<sup>38</sup> *See generally* Neel Burton, *The Psychology of Humiliation*, PSYCH. TODAY (Aug. 27, 2014), <https://www.psychologytoday.com/us/blog/hide-and-peek/201408/the-psychology-humiliation> (discussing the psychological effects of humiliation).

physician may bring in their own improper biases when tending to a woman in restraints.<sup>39</sup>

## II. Policy Solutions – Ways to Curb this Barbaric Practice

The federal government and some state legislatures have attempted to end the inhumane practice of shackling pregnant women. At the federal level, the First Step Act, passed in 2018, is an important piece of criminal justice legislation which, among other initiatives, ended the shackling of pregnant women in federal facilities,<sup>40</sup> during pregnancy, labor, and postpartum recovery.<sup>41</sup> Unfortunately, this legislation only helps women held in federal custody which accounts for only about fifteen percent of the female inmate population.<sup>42</sup> Despite this legislation standing as a signal from the federal government to end the practice, twenty-three states do not have laws against shackling incarcerated pregnant women.<sup>43</sup> For those remaining states, the American Medical Association (AMA) has drafted model state legislation which calls for use of the “least restrictive restraints necessary” when the pregnant individual is in their second or third trimester and that “no restraints of any kind shall be used on an inmate who is in labor,” during delivery, or while recuperating from the delivery.<sup>44</sup>

In addition to legislative attempts to bar the practice, some legal scholars have argued that the shackling of pregnant women is unconstitutional under the Eighth Amendment as a form of “cruel and unusual punishment.”<sup>45</sup> In *Estelle v. Gamble*, the Supreme Court held “deliberate indifference to medical needs of prisoners constitutes the unnecessary and wanton infliction of pain,” that is prohibited under the Constitution by the Eighth Amendment.<sup>46</sup> The case stands for the general proposition that the government has an *affirmative obligation* to provide medical care for incarcerated individuals.<sup>47</sup>

In subsequent cases, however, the Court has seemingly narrowed the protections of the Eighth Amendment as applied to conditions of confinement by refining the standard to prove “deliberate indifference.” In *Farmer v. Brennan*, the Court held in order to prove deliberate indifference, an inmate must satisfy two prongs: (1) she must show she has suffered an objectively serious harm, or that she is

---

<sup>39</sup> See Southall, *supra* note 1.

<sup>40</sup> Anjana Samant, *The First Step Act Is a Small Step for Incarcerated Women*, ACLU (Dec. 27, 2018), <https://www.aclu.org/blog/prisoners-rights/women-prison/first-step-act-small-step-incarcerated-women>. Also, of critical importance for menstruating inmates, the legislation ends cost restrictions for access to menstrual hygiene products. *Id.*

<sup>41</sup> Shackling of Pregnant Women in Jails and Prisons Continues, *supra* note 31.

<sup>42</sup> Yearwood, *supra* note 6.

<sup>43</sup> Shackling of Pregnant Women in Jails and Prisons Continues, *supra* note 31.

<sup>44</sup> An “Act to prohibit the shackling of pregnant prisoners” model state legislation, *supra* note 33.

<sup>45</sup> See Claire Louise Griggs, *Birthing Barbarism: The Unconstitutionality of Shackling Pregnant Prisoners*, 20 AM. U. J. SOC. POL’Y & L 247, 255-58 (2012); See also Nakea Barksdale, *Does Shackling Incarcerated Women During Childbirth Violate the Eighth Amendment?*, AM. BAR. ASS’N. (Apr. 27, 2020), <https://www.americanbar.org/groups/litigation/committees/civil-rights/articles/2020/does-shackling-incarcerated-women-during-childbirth-violate-the-eighth-amendment/>.

<sup>46</sup> *Estelle v. Gamble*, 492 U.S. 97, 104 (1976).

<sup>47</sup> See Griggs, *supra* note 45, at 255-58.

“incarcerated under conditions posing a serious risk of harm”;<sup>48</sup> and (2) she must then demonstrate that the prison official was subjectively aware of the risk.<sup>49</sup> Put more simply, a prison official acts with deliberate indifference if they know “of and [disregard] a serious medical need or a substantial risk to an inmate’s health or safety.”<sup>50</sup>

Given the heightened burden of proving deliberate indifference, some scholars have worried that it would be difficult to raise a cognizable Eighth Amendment claim based on shackling a pregnant inmate.<sup>51</sup> Although the Supreme Court has not itself addressed prison and state policies of shackling pregnant inmates, some federal courts have declared the practice during certain stages of pregnancy and delivery to be cruel and unusual punishment and, thus, unconstitutional under the Eighth Amendment.<sup>52</sup> Two federal court cases are perhaps most enlightening.

First, in *Nelson v. Correctional Medical Services* the plaintiff was chained to her bed by both ankles well into the final stages of labor which prevented her from moving her legs and changing birthing positions.<sup>53</sup> The Eighth Circuit held these restraints violated her constitutional rights, and the officer was not entitled to qualified immunity. Importantly, the court noted that the plaintiff need not show that the officer “*actually believed* that shackling her during labor would harm her.”<sup>54</sup> Rather, “it is enough that the official acted or failed to act despite [their] knowledge of a substantial risk of harm.”<sup>55</sup> By imposing the restraints this way during labor, the prison official exposed both the woman and her child to inherent danger such that the officer was deliberately indifferent to the plaintiff’s serious medical needs.<sup>56</sup> Indeed, the plaintiff suffered a hip dislocation and an umbilical hernia due to the infliction of these restraints.<sup>57</sup> Additionally, the court held that the plaintiff had a clearly established right to not be shackled absent clear and convincing evidence that she posed a security concern or a flight risk.<sup>58</sup>

Second, in *Women Prisoners of D.C. Department of Corrections v. District of Columbia*, the federal district court held that “while a woman is in labor and

---

<sup>48</sup> Farmer v. Brennan, 511 U.S. 825, 835 (1994).

<sup>49</sup> See *id.* (an “official must both be aware of the facts from which the inference can be drawn that a substantial risk of harm exists, and he must also draw the inference”).

<sup>50</sup> Nelson v. Corr. Med. Serv., 583 F.3d 522, 528 (8th Cir. 2009).

<sup>51</sup> See Geraldine Doetzer, *Hard Labor: The Legal Implications of Shackling Female Inmates During Pregnancy and Childbirth*, 14 WM J. of Race, Gender, & Social Just. 363, 381-82. This is not even to mention the hurdle placed by the physical injury requirement of the Prison Litigation Reform Act which serves as another substantial hurdle to inmates seeking justice. See *id.* at 373-76, 381-82.

<sup>52</sup> See Nakea Barksdale, *Does Shackling Incarcerated Women During Childbirth Violate the Eighth Amendment?*, AM. BAR. ASS’N. (Apr. 27, 2020), <https://www.americanbar.org/groups/litigation/committees/civil-rights/articles/2020/does-shackling-incarcerated-women-during-childbirth-violate-the-eighth-amendment/>.

<sup>53</sup> Nelson, 583 F.3d at 525-26.

<sup>54</sup> *Id.* at 529 (emphasis added).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 532-33.

<sup>57</sup> Griggs, *supra* note 45, at 253 (citing Nelson, 583 F.3d. at 526).

<sup>58</sup> *Id.* at 533-34.

shortly thereafter... shackling is inhumane” and such shackling is a violation of her constitutional rights.<sup>59</sup> Further, the court reasoned the shackling of a pregnant woman clearly satisfied the deliberate indifference standard: an officer who shackles a woman in labor acts with “deliberate indifference ... since the risk of injury ... is obvious.”<sup>60</sup>

### III. Conclusion

The harmful effects of shackling pregnant women have now been well documented, and the flimsy justifications for such policies have been refuted by legal scholars and medical professionals alike.<sup>61</sup> By failing to take action to outlaw this archaic practice of shackling pregnant inmates, states continue to demonstrate their indifference to the health of incarcerated women and their children. The birth of a child is already a stressful, emotional, and sometimes dangerous experience for a woman. For incarcerated women, that experience may be escalated into a traumatic event by the dehumanizing practice of shackling. The infliction of this trauma cannot—and should not—be an objective of any penal system. Immediate reform is both constitutionally mandated and absolutely necessary.

---

<sup>59</sup> *Women Prisoners of D.C. Dep’t of Corr. V. District of Columbia*, 877 F.Supp. 634, 668 (D.D.C. 1994); *see also* Barksdale, *supra* note 52.

<sup>60</sup> *Women Prisoners of D.C. Dep’t of Corr.*, 877 F.Supp. at 669.

<sup>61</sup> *See e.g.*, *The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers*, *supra* note 12.