

Congress of the United States
House of Representatives
Washington, DC 20515-4707

March 20, 2019

The Honorable Kirstjen M. Nielsen
Secretary
Department of Homeland Security
3801 Nebraska Ave NW
Washington, D.C. 20016

Dear Secretary Nielsen:

I write to express my deep alarm about reports that the Department of Homeland Security's Office of Civil Rights and Civil Liberties (DHS CRCL) is detaining increasing numbers of infants and is not investigating complaints at family detention facilities. Detention is never appropriate for children, especially for infants. Following the death of two young children in your custody, these allegations are disturbing and warrant immediate action to ensure the safety and well-being of children.

On March 19, 2019, Dr. Scott Allen and Dr. Pamela McPherson, who respectively serve as DHS CRCL medical and mental health subject-matter experts in detention, sent a letter to Congress raising concern "about the ongoing and future threat of harm to children posed by the current and proposed expansion of the family detention program."¹ In addition, the doctors warned that DHS has halted and even reversed implementation of critical recommendations to protect children in the agency's custody.²

I am troubled by the overall increase in detention, in particular among infants and children. A recent complaint filed with DHS CRCL and the DHS Office of Inspector General called attention to the unprecedented detention of at least nine infants under the age of one in the custody of U.S. and Immigration and Customs Enforcement (ICE).³ In response, ICE revealed that the agency has detained 17 infants under a year old at the Dilley Family Detention Center despite a previous CRCL recommendation against detaining children under two years old. There is ample documentation showing that there is limited access to adequate medical care in family

¹ Letter from Drs. Scott Allen & Pamela McPherson to the Honorable Jerrold Nadler, Chair, House Committee on Judiciary, the Honorable Lindsey Graham, Chair, Senate Committee on Judiciary, the Honorable Bennie G. Thompson, Chair, House Committee on Homeland Security, the Honorable Ron Johnson, Chair, Senate Homeland Security and Governmental Affairs Committee re: practices at family detention centers that are endangering children (March 19, 2019) available at: <https://jayapal.house.gov/wp-content/uploads/2019/03/031919-whistleblowers-letter-to-congress-w-cover-letter-fact-sheet-re-children-in-detention.pdf>.

² *Id.*

³ Complaint filed by the American Immigration Council, American Immigration Lawyers Association (AILA) & Catholic Legal Immigration Network, Inc. (CLINIC) to Dep't of Homeland Security Office for Civil Rights and Civil Liberties (DHS CRCL) & DHS Office of Inspector General (DHS OIG) re: Increase in Infants Detained in ICE Custody, (Filed Feb. 28, 2019) available at: http://americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_urges_immediate_release_of_infants_from_immigration_detention.pdf.

detention facilities.⁴ Mothers have reported facility medical staff instructing them to give their children more water regardless of the medical condition presented and lengthy wait times ranging from three to 14 hours to receive care.⁵ Moreover, the general consensus among medical experts is that even brief stints in detention may cause psychological trauma and induce long-term mental health risks for children regardless of the programming provided, and that detention of children should be avoided.⁶

Further, I am concerned that CRCL has not asked Drs. Allen and McPherson to conduct on-site investigations since November 2017. This is deeply concerning given the poor oversight of DHS detention facilities. Currently, ICE relies on inspections that are announced in advance to determine whether facilities meet standards and continue to receive government funding.⁷ Further, the DHS Office of Inspector General concluded that “ICE does not adequately hold detention facility contractors accountable for not meeting performance standards”⁸ and that ICE’s inspections “do not ensure adequate oversight or systemic improvements in detention conditions, with some deficiencies remaining unaddressed for years.”⁹

In December 2018, two young children, ages seven and nine, died in your custody.¹⁰ In addition, last year, an 18-month-old girl detained at the Dilley Family Detention Center died following her release.¹¹ These tragic incidents follow numerous reports of inadequate care for children and adults alike. I request answers to the following questions within 30 days:

1. Please share any current policies pertaining to the detention of children under the age of two in DHS custody.

⁴ See, e.g., Complaint filed by the American Immigration Council, AILA, *et al.* to DHS CRCL & DHS OIG re: ICE’s Failure to Provide Adequate Medical Care to Mothers and Children in Family Detention Facilities (Filed Jul. 30, 2015) available at: <https://www.aila.org/advo-media/press-releases/2015/deplorable-medical-treatment-at-family-detention-ctr-public-version-of-complaint-to-crcl>.

⁵ *Id.*

⁶ See, e.g., Letter from Drs. Scott Allen & Pamela McPherson to the Honorable Charles E. Grassley, Chair, Senate Whistleblowing Caucus & the Honorable Ron Wyden, Vice Chair, Senate Whistleblowing Caucus re: Doctors’ Congressional Disclosure (Jul. 17, 2018) available at: <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>; Julie M. Linton, Marsha Griffin & Alan J. Shapiro, *Detention of Immigrant Children*, 139 *Pediatrics* (May 2017) available at: <https://pediatrics.aappublications.org/content/139/5/e20170483#ref-51>.

⁷ DHS Office of Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (Jun. 26, 2018) available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf> [hereinafter “DHS OIG 2018”] at 10.

⁸ DHS Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 29, 2019) available at: <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

⁹ DHS OIG 2018.

¹⁰ Letter from Academic Pediatric Association, American Academy of Pediatrics, *et al.* to Members of Congress re: Oversight of Child Detention Centers (Jul. 24, 2018) available at: https://www.acponline.org/acp_policy/letters/letter_house_oversight_request_on_child_detention_centers_2018.pdf.

¹¹ Daniella Silva, *Guatemalan Mom Says Inadequate Medical Care in ICE Custody Led to Toddler’s Death*, NBC NEWS (Aug. 29, 2018) available at: <https://www.nbcnews.com/news/latino/guatemalan-mom-says-inadequate-medical-care-ice-custody-led-toddler-n904756>.

2. Has the agency reversed or otherwise modified implementation of recommendations from early DHS CRCL investigative teams, including a recommendation against detention of children under the age of two? If so, what was the rationale for any such decision? Were child welfare and medical and mental health experts consulted? If so, please describe the level of medical training of each expert, as well as each expert's prior history of work in or regarding a detained setting.
3. Since September 2017, how many times has CRCL inspected family detention facilities in person? For each inspection, was a medical and mental health subject matter expert involved? If so, please describe the level of medical training of each expert, as well as each expert's prior history of work in or regarding a detained setting.
4. Since implementation of the "zero-tolerance" policy, how many complaints have been filed regarding care at ICE family detention facilities. Please provide a breakdown:
 - a. Of the nature of the complaints;
 - b. By facility;
 - c. The number of complaints that resulted in on-site investigations, and if so how many on-site investigations per complaint;
 - d. For each on-site inspection, was a medical and mental health subject matter expert involved? If so, please describe the level of medical training of each expert, as well as each expert's prior history of work in or regarding a detained setting.
 - e. A breakdown of the result of any investigations, including whether recommendations issued by investigators were implemented and the current status of those recommendations;
5. How many children under the age of two are currently in ICE custody? Please provide a breakdown by 0-6 months, 7 months to one year, and one to two years old, as well as the minimum, median, and maximum length of detention.
6. How many children under the age of two were in ICE custody in fiscal year 2016, 2017, and 2018? Please provide a breakdown by 0-6 months, 7 months to one year, and one to two years old, as well as the minimum, median, and maximum length of detention by fiscal year.

Thank you for your prompt attention to this matter.

Sincerely,



PRAMILA JAYAPAL
Member of Congress