



GOVERNMENT
ACCOUNTABILITY
PROJECT

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March 19, 2019

The Honorable Jerry Nadler
Chairman
House Judiciary Committee
Washington, DC 20515

The Honorable Bennie Thompson
Chairman
House Committee on Homeland Security
Washington, DC 20515

The Honorable Lindsey Graham
Chairman
Senate Judiciary Committee
Washington, DC 20515

The Honorable Ron Johnson
Chairman
Senate Homeland Security and Governmental Affairs Committee
Washington, DC 20515

Dear Committee Chairmen,

Below please find a letter from our clients, Dr. Scott Allen and Dr. Pamela McPherson, regarding their concerns about practices at family detention centers that are endangering children. Dr. Allen and Dr. McPherson serve respectively as the medical and mental health subject-matter experts in detention for the Department of Homeland Security's Office of Civil Rights and Civil Liberties.

Very truly yours,

/s/

Dana L. Gold
Counsel for Dr. Scott Allen & Dr. Pamela McPherson
Senior Counsel & Director of Education
Government Accountability Project

Cc:

House Committee on Oversight and Reform
House Judiciary Committee
House Committee on Energy and Commerce
Senate Homeland Security and Governmental Affairs Committee
Senate Judiciary Committee



Whistleblowers Renew Challenges to Family Detention

Dr. Scott Allen and **Dr. Pamela McPherson** serve as medical and mental health subject-matter experts for the Department of Homeland Security (DHS) Office of Civil Rights and Civil Liberties (CRCL). As the only CRCL subject matter experts on medical and mental health care in family detention, they observed many compliance failures and problems within the program and believe that the Administration's "zero-tolerance" immigration policy, which has already and will continue to increase child detentions, poses serious risks of ongoing and future harm to children.

They reported their concerns to Congress over the summer of 2018.¹ Fourteen leading medical professional associations immediately echoed their concerns, which were widely reported in the news and remarked upon at congressional oversight hearings.

Since becoming whistleblowers, neither DHS writ large nor CRCL have asked Dr. Allen or Dr. McPherson to conduct on-site investigations into complaints about care in family detention.

Dr. Allen and Dr. McPherson are concerned:

- **DHS CRCL may not be conducting on-site investigations into complaints at family detention centers since the issuance of the "zero-tolerance" policy.**
- **The Trump administration has reversed implementation of recommendations from early DHS CRCL investigative teams, including detaining children under the age of two.**
- **DHS's expansion of family detention, which runs counter to the recommendations of its own subject-matter experts and the consensus of the medical community, not only constitutes knowing endangerment of children but has resulted in real harm**

Through this letter, Dr. Allen and Dr. McPherson urge Congress to:

- **Investigate DHS' treatment of complaints filed since implementation of the "zero-tolerance" immigration policy. Congress should determine whether CRCL has performed any on-site investigations into those complaints and whether recommendations from those investigations have been issued and/or implemented at the facilities.**
- **Investigate whether recommendations issued by CRCL investigative teams regarding conditions of care made prior to execution of the "zero-tolerance" immigration policy are currently being implemented by DHS at family detention centers.**
- **Pass legislation that would prohibit the detention of all minor children in light of DHS's proven inability to provide necessary medical and mental health care to the immigrant population crossing the southern border.**

¹ <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html>

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Dear Committee Chairmen,

We currently serve as medical and mental health subject-matter experts for the Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL).¹ As doctors with a duty to prevent harm, we are writing to escalate the concerns we have previously raised with Congress about the ongoing and future threat of harm to children posed by the current and proposed expansion of the family detention program. We urge you to exercise your oversight authority and responsibility to ensure that the health and safety of the children crossing at our southern borders is prioritized over their confinement.

¹ Dr. Scott Allen is board certified in Internal Medicine and is a Fellow of the American College of Physicians. Dr. Allen is a Professor Emeritus of Medicine, a former Associate Dean of Academic Affairs and former Chair of the Department of Internal Medicine at the University of California Riverside School of Medicine. From 1997 to 2004, he was a full-time correctional physician for the Rhode Island Department of Corrections; for the final three years, he served as the State Medical Program. He has published over 25 peer-reviewed papers in academic journals related to prison health care and is a former Associate Editor of the International Journal of Prisoner Health Care. Dr. Allen is the court appointed monitor for the consent decree in litigation involving medical care at Riverside County Jails. He has consulted on detention health issues both domestically and internationally for the Open Society Institute and the International Committee of the Red Cross among others. He has worked with the Institute of Medicine on several workshops related to detainee healthcare. He is a medical advisor to Physicians for Human Rights. Dr. Allen co-founded and is co-director of the Center for Prisoner Health and Human Rights at Brown University, is a Co-Investigator of the University of California Criminal Justice and Health Consortium. He is also the founder and medical director of the Access Clinic, a primary care medical home to adults with developmental disabilities.

Dr. Pamela McPherson is a medical doctor triple-boarded in general, child and adolescent, and forensic psychiatry. Dr. McPherson has practiced medicine for over 30 years. She is the child and adolescent psychiatrist at the Shreveport Behavioral Health Center, a regional state sponsored clinic in northwest Louisiana. In addition to providing mental health care to children and their families, she teaches child and adolescent psychiatry fellows and forensic psychiatry fellows at the Louisiana State University Health Sciences University in Shreveport, Louisiana as grats faculty. Dr. McPherson has qualified as a forensic psychiatry expert in juvenile and adult matters. She has participated in research and presented at national and an international conference regarding the mental health of justice involved youth. Dr. McPherson has a special interest in juvenile justice, specifically conditions of confinement. In addition to acting as an expert for the Civil Rights/Civil Liberties Office of DHS, she has acted as an expert on mental health services to justice involved youth in pre-adjudicatory (San Francisco, Detroit, and Los Angeles) and post-adjudicatory (Montana, Louisiana, and New Mexico) juvenile facilities for the United States Department of Justice, Youth Law Center and the ACLU.

In a July 2018 letter to the Senate Whistleblower Protection Caucus,² we alerted Congress to concerns we had about systemic problems in the provision of care at DHS family detention centers that, based on our prior investigations of such facilities over four years, we believed would foreseeably threaten the health and safety of families with children with the expansion of family detention arising out of the “zero tolerance” immigration policy.³

The validity of our concerns was immediately echoed by fourteen leading medical professional associations including the American Medical Association, the American Academy of Pediatrics, the American College of Physicians, the American Psychiatric Association and the American Nursing Association.⁴

Despite having raised the alarm about imminent harm to children in detention with Congress and DHS, including submitting written testimony at two Senate hearings into DHS policies and practices⁵ and offering written comments⁶ opposing DHS’s proposal to overturn the *Flores* Settlement Agreement (FSA) (which, if implemented, would allow for indefinite detention of children despite DHS’s awareness that even limited detention causes medical and psychological harm to children), family detention has expanded with no evidence that the systemic problems with the provision of medical and mental health care have been addressed.

Instead, as we warned, the expansion of detention has resulted in increased reports of harm to children. Since we originally raised our concerns, the detention of families with children has continued and there have been two deaths of children in DHS custody at Customs & Border Patrol (CBP) facilities even less equipped than the DHS family detention centers to adequately address the medical needs of the immigrant detainees.⁷ Complaints of sexual abuse and assault

²Letter to Senators Grassley and Wyden from Drs. Allen and McPherson (July 17, 2018) (<https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>); Miriam Jordan, “Whistle-blowers Say Detaining Migrant Families ‘Poses High Risk of Harm,’” *New York Times* (July 18, 2018) (<https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html>).

³ We raised these same concerns with CRCL leadership and the DHS Inspector General prior to communicating with Congress.

⁴See Letter to House Judiciary Committee, House Energy and Commerce Committee, House Homeland Security Committee, and House Appropriations Committee (July 24, 2018) (letter viewable at https://www.acponline.org/acp_policy/letters/letter_house_oversight_request_on_child_detention_centers_2018.pdf); Letter to Senate Judiciary Committee, Senate HELP Committee, Senate HSGAC Committee, and Senate Appropriations Committee (July 24, 2018) (letter viewable at <https://www.psychiatry.org/newsroom/news-releases/apa-joins-health-care-community-in-calling-on-congress-to-hold-hearings-on-treatment-of-children-separated-from-parents-at-border>); American College of Physicians, *Internists Call for Congressional Oversight of Family Detention* (July 20, 2018), <https://www.acponline.org/acp-newsroom/internists-call-for-congressional-oversight-of-family-detention>.

⁵See [Senate Judiciary Committee Oversight Hearing on Immigration Enforcement and Family Reunification Efforts \(July 30, 2018\)](#) and [HSGAC Hearing on The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives \(September 18, 2018\)](#).

⁶ See Comment of Dr. Scott Allen and Dr. Pamela McPherson on the *Immigration and Customs Enforcement Bureau (ICEB) Proposed Rule: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, <https://www.regulations.gov/document?D=ICEB-2018-0002-18931> (November 5, 2018).

⁷ Sheri Fink and Caitlin Dickerson, “Border Control Facilities Put Detainees With Medical Conditions At Risk,” *New York Times* (March 5, 2019), <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>

suffered by children in detention from staff continue to climb,⁸ with no evidence that trauma-informed care is offered to children despite our recommendations regarding best practices. These deaths and continued reports of sexual assault highlight the risks that detention poses to children that prompted leading medical associations to again warn DHS about the danger associated with child detentions.⁹

We were troubled recently by press reports that revealed babies under the age of one had been detained at the South Texas Family Residential Center in Dilley, Texas.¹⁰ In the course of our four inspections of that facility and the Karnes facility, we cited in our investigative reports the high risk to the health and safety of all children, but in particular, children under the age of two. Indeed, in 2014, in the process of debriefing high-level DHS officials about conditions in the now closed Artesia family detention facility, we warned DHS of the risks associated with detaining children, and children under the age of two in particular.

Children under the age of two are at higher risk for the adverse health consequences associated with detention and also require greater expertise that is not available at these remote centers. In our earlier communications with Congress, we highlighted the cases of two infants who had received dangerously inadequate care in DHS facilities including an infant with unrecognized and untreated severe dehydration and a newborn child with an unrecognized brain hemorrhage.

At the time of our last inspection in November 2017, our recommendation to not detain children under the age of two appeared to have been largely implemented. We are therefore concerned to now learn that this prior policy that had been implemented to shield the most vulnerable children from the risks to physical and mental health associated with detention appears to have been abandoned.

In response to a complaint demanding release of children under the age one at the South Texas Family Residential Center, which cited our initial disclosures as support for the harm posed to infants in detention,¹¹ ICE released sixteen children¹² held at the Dilley facility. Yet at least one remains at the Karnes facility. It is not clear how many children remain in detention under the age of two.

It is worth noting that since raising our concerns with DHS and Congress eight months ago, we have not been asked by DHS to review medical and mental health care in family detention

⁸ Richard Gonzales, "Sexual Assault of Detained Migrant Children Reported In The Thousands Since 2015," *NPR* (February 26, 2019), <https://www.npr.org/2019/02/26/698397631/sexual-assault-of-detained-migrant-children-reported-in-the-thousands-since-2015>.

⁹ Provider Group Letter to Kristjen Nielsen (DHS) and Kevin McAleenan (CBP) (December 18, 2018), <https://downloads.aap.org/DOFA/CBP%20Provider%20Group%20Letter%20Final.pdf>

¹⁰ Kate Smith, "12 detained babies have been released from ICE custody in Dilley, Texas," *CBS News* (March 4, 2019), <https://www.cbsnews.com/news/immigrant-children-detained-12-babies-released-from-ice-custody-detention-center-dilley-texas-2019-03-04/>

¹¹ Complaint to CRCL & DHS from American Immigration Council, American Immigration Lawyers Association, and Catholic Legal Immigration Network, Inc., (February 28, 2019), https://americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_urges_immediate_release_of_infants_from_immigration_detention.pdf

¹² Rex Santus, "There's only 1 baby left at the largest family detention center in U.S., ICE says," *Vice News* (March 5, 2019), https://news.vice.com/en_us/article/kzdkaa/ice-released-12-babies-in-texas-but-5-are-still-detained

facilities, nor has CRCL or DHS sought our further input on family detention policies. In fact, to the best of our knowledge, the last inspection of family detention facilities by CRCL occurred in September 2017, long before the expansion of family detention.

Such a lapse in internal oversight is alarming.

Even if we are asked to return to inspect family detention facilities, DHS has demonstrated an inability to correct many of the deficiencies we might identify. This opinion is not merely based on our own experience: it is the finding of the DHS Office of Inspector General. In his testimony before the House Committee on Appropriations, Subcommittee on Homeland Security on March 6, 2019, Acting Inspector General John V. Kelly stated:

...ICE does not adequately follow up on identified deficiencies or systematically hold facilities accountable for correcting deficiencies, which further diminishes the usefulness of both Nakamoto and ODO inspections. In addition, ICE Enforcement and Removal Operations (ERO) field offices' engagement with onsite monitoring program Detention Service Managers (DSM) is inconsistent, which hinders implementation of needed changes. Although ICE's inspections, follow-up processes, and DSMs' monitoring of facilities help correct some deficiencies, they do not ensure adequate oversight or systemic improvements in detention conditions. As a result, certain deficiencies remain unaddressed for years.¹³

As physicians who have raised serious concerns about the health and safety of families with children in DHS custody, we are seriously concerned by the fact that the practice of detaining children continues unabated. But we are even more disturbed to learn since raising the alarm, DHS has expanded detention to include the most vulnerable of children: children under the age of two.

There is a solid consensus in the medical profession that detention of children is harmful to the health and safety of children. Known long-term consequences of detention include increased risk of significant physical and mental health consequences including, anxiety, depression, post-traumatic stress disorder and poor physical health including future increased risk of diabetes, coronary artery disease and hypertension. Yet, in spite of the unified voice of the medical profession, as well as our own, the government's own subject-matter experts, harmful and inhumane detention policies remain in effect, amounting to knowing endangerment of children.

The practice of detaining children and families is no longer an issue of policy dispute. It is a willful policy that knowingly inflicts serious harm to children, including risk of death.

We therefore urge Congress, in our personal capacities as medical professionals, to:

¹³Testimony of Acting Inspector General John V. Kelly Before the House Committee on Appropriations, Subcommittee on Homeland Security (March 6, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/TM/2019/oigtm-jvk-030619.pdf>

- Investigate the number and nature of complaints filed since implementation of the “zero-tolerance” immigration policy regarding care at DHS family detention centers, whether CRCL has performed any on-site investigations into those complaints, and if so, whether any recommendations from those investigations or from CRCL have been issued and/or implemented at the facilities;
- Investigate whether recommendations issued by CRCL investigative teams regarding conditions of care made prior to execution of the “zero-tolerance” immigration policy are currently being implemented by DHS at family detention centers;
- Pass legislation that would prohibit the detention of all minor children in light of DHS’s proven inability to provide necessary medical and mental health care to the immigrant population crossing the southern border. Alternatives to detention were recommended except in the most limited of circumstances by ICE’s own Advisory Committee on Family Residential Centers in 2016.¹⁴

As always, we continue to be willing to serve DHS and Congress as subject-matter experts in ongoing efforts to protect the health and safety of populations under our care.

Sincerely,

/s/

Dr. Scott Allen & Dr. Pamela McPherson

Cc:

House Committee on Oversight and Reform

House Judiciary Committee

House Committee on Energy and Commerce

Senate Homeland Security and Governmental Affairs Committee

Senate Judiciary Committee

¹⁴ Report of the ICE Advisory Committee on Family Residential Centers (October 7, 2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>.