

July 14, 2020

The Honorable Bennie Thompson
Chairman
House Committee on Homeland Security
310 Cannon House Office Building
Washington, D.C. 20515

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Carolyn Maloney
Chairwoman
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Rogers
Ranking Member
House Committee on Homeland Security
310 Cannon House Office Building
Washington, D.C. 20515

The Honorable Gary Peters
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable James Comer
Ranking Member
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Committee Chairpersons and Ranking Members:

We are physicians—an internist, a child and adolescent psychiatrist, and an infectious disease specialist—with unique expertise in medical care in detention settings.¹ We serve as medical and

¹ I, Dr. Scott Allen, MD, FACP, am 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, I was a full-time correctional physician for the Rhode Island Department of Corrections; for the final three years, I served as the Director of the State Medical Program. I have published over 25 peer-reviewed papers in academic journals related to prison health care and am a former Associate Editor of the International Journal of Prisoner Health Care. I am the court appointed monitor for the consent decree in litigation involving medical care at Riverside County Jails. I have consulted on detention health issues both domestically and internationally for the Open Society Institute and the International Committee of the Red Cross, among others. I have worked with the Institute of Medicine on several workshops related to detainee healthcare and serve as a medical advisor to Physicians for Human Rights. I am the co-founder and co-director of the Center for Prisoner

mental health experts in detention health for the Department of Homeland Security (DHS)'s Office of Civil Rights and Civil Liberties (CRCL). Two of us (Dr. Allen and Dr. McPherson) have conducted numerous investigations of immigration detention facilities on CRCL's behalf over the past five years. We are all clinicians and continue to see patients, while one of us (Dr. Rich) is currently providing care to coronavirus infected patients in an ICU setting.

We are writing to you, members of Congress responsible for overseeing DHS, because we have a professional obligation to raise our grave concerns about DHS's reattempt to separate children from their families in response to a federal court order to release the children when it is within ICE discretion to release the families intact.² A policy of separation will exacerbate the physical and mental trauma to detained families who know they are unable to protect themselves from the deadly, rapidly spreading pandemic. We advocate for the release of immigrant detainees who

Health and Human Rights at Brown University (www.prisonerhealth.org), and a former Co-Investigator of the University of California Criminal Justice and Health Consortium. I am also the founder and medical director of the Access Clinic, a primary care medical home to adults with developmental disabilities.

I, Dr. Pamela McPherson, am a medical doctor triple boarded in general, child and adolescent, and forensic psychiatry. I have practiced medicine for over 30 years. I am 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, I teach child and adolescent psychiatry fellows and forensic psychiatry fellows at the LSU Health Sciences University in Shreveport, Louisiana as gratis faculty. I am qualified as a forensic psychiatry expert in juvenile and adult matters. I have also participated in research and presented at national and an international conference regarding the mental health of justice involved youth. I have 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, I act 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.

I, Dr. Josiah (Jody) Rich, MD, MPH, am a Professor of Medicine and Epidemiology at The Warren Alpert Medical School of Brown University, and a practicing Infectious Disease Specialist since 1994 at The Miriam Hospital Immunology Center providing clinical care for over 22 years, and at the Rhode Island Department of Corrections caring for prisoners with HIV infection and working in the correctional setting doing research. I have published close to 190 peer-reviewed publications, predominantly in the overlap between infectious diseases, addictions and incarceration. I am the Director and Co-founder of The Center for Prisoner Health and Human Rights at The Miriam Hospital (www.prisonerhealth.org), and a Co-Founder of the nationwide Centers for AIDS Research (CFAR) collaboration in HIV in corrections (CFAR/CHIC) initiative. I am Principal Investigator of three R01 grants and a K24 grant all focused on incarcerated populations. My primary field and area of specialization and expertise is in the overlap between infectious diseases and illicit substance use, the treatment and prevention of HIV infection, and the care and prevention of disease in addicted and incarcerated individuals. I have served as an expert for the National Academy of Sciences, the Institute of Medicine and others.

² Spencer Hsu, "U.S. might separate families after federal judge orders ICE to free migrant children," Washington Post, July 7, 2020, available at: https://www.washingtonpost.com/local/legal-issues/us-may-separate-families-after-federal-judge-orders-ice-to-free-migrant-children/2020/07/07/a1758ad6-c067-11ea-b178-bb7b05b94af1_story.html. At the time of this letter, Judge Boasberg is conducting a hearing on a preliminary injunction filed to stop the potential separation of children from their families as a means to comply with the order by Judge Dolly Gee in requiring release of children by July 17, 2020. See Julia Ainsley and Jacob Soboroff, "Immigrant parents denied adequate medical care, should be released with their children, lawyers say," NBC, July 13, 2020, available at <https://www.nbcnews.com/news/us-news/immigrant-parents-denied-adequate-medical-care-should-be-released-their-n1233615>. Given that it is likely that Judge Boasberg's decision will be appealed, we feel compelled to put Congress on notice about the potentially imminent threat of harm to children if separation of children from their families occurs.

present no threat to communities to prevent both the harm of family and children separation and the risk of spread and infection of COVID-19.

We shared our concerns about the serious medical and mental health risks associated with the detention of families, exacerbated by the coronavirus spreading in congregate settings, with CRCL's Officer Cameron Quinn in a July 10, 2020 letter. We also offered to work with DHS in light of our shared obligation to protect the health, safety, and civil rights of the detainees under DHS's care. But because we are concerned that DHS may soon finalize the reuse the practice of family separation using a federal court order as justification, we are reaching out to you.

We urge you to exercise your oversight authority to prevent DHS from restarting family separation in detention facilities. We offer to Congress, as we have to CRCL, our expert support and assistance to mitigate this crisis, prevent the reuse of family separation policies, and confront the spread of coronavirus in detention settings. Our professional obligation requires us to intervene to mitigate ongoing and future avoidable harm to children and families.

Detention and COVID-19 Continue to Pose Harm to the Health of Children and Families

In 2018, two of us (Dr. Allen and Dr. McPherson) warned the DHS, Congress, and the public about the foreseeable harm detention uniquely causes to migrant children.³ Two of us asserted then and all three of us assert today that the fundamental flaw of family detention is the incarceration of innocent children itself. In our professional opinion, the harms of confining children to detention centers cannot be reversed. The detention of innocent children should not be our country's first choice, especially when less restrictive options are available; the medical and mental harm to innocent children which detention causes can never be justified.

As experts in medical and mental health in detention settings, we watched in horror as innocent children were forcibly separated from their families as the administration deployed their "zero tolerance" policy. In our professional opinion, the separation of children was an act of state sponsored child abuse. More than two thousand children separated and traumatized by the administration's policy will now face a lifetime of increased risk of significant physical and mental health consequences, including anxiety, depression, post-traumatic stress disorder and poor physical health.⁴ Even when families are not separated, the detention of children with a parent also possess a high risk of traumatic harm to the children. We cannot repeat the mistaken family separation policies of the past.

In March of this year, two of us (Dr. Allen and Dr. Rich) warned DHS and Congress about the severe health threat to immigrants, workers, and the public posed by the rapid spread of the

³ Dr. Allen and Dr. McPherson Letter to Senate Whistleblowing Caucus Chairs, July 17, 2018, available at: <https://whistleblower.org/wp-content/uploads/2019/01/Original-Docs-Letter.pdf>; Scott Allen, Pamela McPherson, "We warned DHS that a migrant child could die in U.S. custody. Now one has.," December 19, 2019, available at: <https://www.washingtonpost.com/outlook/2018/12/19/we-warned-dhs-that-migrant-child-could-die-us-custody-now-one-has/>

⁴ See Appendix of Dr. Allen and Dr. McPherson Letter to Senate Whistleblowing Caucus Chairs, available at: <https://whistleblower.org/wp-content/uploads/2019/01/Original-Docs-Letter.pdf>

coronavirus and resulting infection of COVID-19.⁵ Congregate settings such as immigration detention facilities pose unique challenges given the lack of social distancing and the extensive transfer of individuals through the detention system. The spread of coronavirus by children who do not manifest symptoms unavoidably spreads the virus through detention facilities to older families members who may be a higher risk of serious illness. Severe coronavirus infections may overwhelm precious local health resources, further constraining the medical system's ability to respond to the illnesses presented by immigrants and the public. One of us (Dr. Allen) testified before the Senate Committee on the Judiciary to expand on this letter.⁶

Since our initial letter, ICE has confirmed more than 3,000 coronavirus-positive detainees in its congregate detention centers.⁷ This count is almost certainly an underestimate. It is evident that this pandemic has exponentially increased the dangers and risks of congregate detention settings. Facing severe threats to health and life, immigrant families who present no threat to the community should be released from detention as expeditiously as possible. Otherwise, detention settings can be a hub of spread of the virus throughout both detention facilities themselves and their surrounding communities.

DHS's Reattempt to Separate Families is Contrary to Expert Recommendations

Despite the overwhelming warning and recommendation of the medical community, DHS has ignored the advice of its own experts, continuing to keep children in detention for months, above and beyond the court-mandated 20-day limit. DHS has also failed to release most of the immigrants from detention facilities around the country, contrary to the advice of medical and public health efforts. Worse, DHS is now attempting to reinstate the practice of family separation using a federal court order as justification.

Last month, on June 26, the United States District Court for the Central District of California ordered the release of migrant children in three family detention centers (two in Texas, one in Pennsylvania) by July 17. Citing the administration's inability to meet the basic health and safety guidelines for congregate detention facilities outlined by the Centers for Disease Control and Prevention, Judge Dolly M. Gee, ordered Immigration and Customs Enforcement (ICE) to release children who have been held for more than 20 days in the detention centers with "all deliberate speed."⁸ The Court ruled that ICE must either transfer the minors to a suitable sponsor with parental consent or release the children and parents from detention together.

⁵ Dr. Allen and Dr. Rich Letter to House and Senate Committees on Homeland Security and House Committee on Oversight and Reform, March 19, 2020, available at: <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>

⁶ Scott Allen, "Examining Best Practices for Incarceration and Detention During COVID-19," Written Statement to the U.S. Senate Committee on the Judiciary, June 2, 2020, available at: <https://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>

⁷ Emily Kassie, Barbara Marcolini, "How ICE Exported the Coronavirus," The Marshall Project and The New York Times, July 10, 2020, available at: <https://www.themarshallproject.org/2020/07/10/how-ice-exported-the-coronavirus>

⁸ *Jenny L. Flores, et al. v. William P. Barr, et al.*, Order Regarding Updated Juvenile Coordinator Reports [808, 813], available at: <https://www.courthousenews.com/wp-content/uploads/2020/06/Gee-Order.pdf>

This order came despite the gaping holes in those guidelines, including the failure to contemplate population reduction and the failure to provide adequate guidelines for testing. As one of us (Dr. Allen) told the Senate Judiciary Committee: “The fact is, in the real world, the guidelines—and accordingly their implementation by BOP and ICE—are failing to stop the spread. The number of cases and deaths continues to grow.”⁹ These guidelines detail the minimum practices facilities should adopt. Judge Gee ruled that ICE did not even reach that bar.

Press accounts from July 7 suggest DHS may be considering separating children currently in family detention from their parents in an effort to comply with Judge Gee’s court order.¹⁰ This unconscionable response will only further harm immigrants in detention. As medical and mental health experts in detention settings, we are concerned that family separation is again being contemplated when the department has the discretion to release families to the community.¹¹ Our expert position remains the same: while the COVID-19 pandemic has exponentially increased the dangers and risks associated with congregate detention, the separation of children from their parents is unjustifiable and creates new medical and mental health risks to detainees.

The medical and mental health concerns resulting from family detention, raised by two of us (Dr. Allen and Dr. McPherson) in our March 2018 letter, are exacerbated by the COVID-19 pandemic. DHS’s inability to protect innocent children is an unethical and unjustifiable abuse of power. Indeed, the Department’s insistence to return to a policy of family separation amplifies the physical and mental trauma experienced by children. Our professional duty to protect children and families from undue medical risks warrants us to speak out against DHS’s attempt to return to a policy which inflicts irreparable harms on children for their entire life.

The health risks posed by detention combined with the threat of rapid spread and severe infection of COVID-19 in congregate settings necessitates a proactive approach to limit harm to immigrants, workers, and the public. In our professional opinion, the release of children and parents who do not pose an immediate risk to public safety is the best policy to minimize potential harm to detainees’ physical and mental health. But they must be released together to avoid the harm that we know would result from separation.

We sincerely hope that Congress use its oversight authority to ensure DHS does not knowingly use a federal court order as justification to justify separating children from their families. We urge Congress to encourage DHS’s support of best practices to fight a pandemic in a congregate setting: careful, risk-based population reduction. The medical and mental health risks posed by detention and the risk of spread and infection by COVID-19 in congregate settings necessitates a proactive approach to limit harm to immigrants, detention workers, and the public.

⁹ Scott Allen, “Examining Best Practices for Incarceration and Detention During COVID-19,” Written Statement to the U.S. Senate Committee on the Judiciary, June 2, 2020, available at:

<https://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>

¹⁰ Spencer Hsu, “U.S. might separate families after federal judge orders ICE to free migrant children,” Washington Post, July 7, 2020, available at: https://www.washingtonpost.com/local/legal-issues/us-may-separate-families-after-federal-judge-orders-ice-to-free-migrant-children/2020/07/07/a1758ad6-c067-11ea-b178-bb7b05b94af1_story.html

¹¹ Camilo Montoya-Galvez, “‘Powder kegs’: Calls grow for ICE to release immigrants to avoid coronavirus outbreak,” March 19, 2020, available at: <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>

As we similarly offered to DHS, we stand ready to aid you in any way to mitigate this crisis and prevent its escalation in light of our unique expertise in detention health and experience with ICE detention specifically. Please contact our attorney, Dana Gold, at danag@whistleblower.org, or her colleague, Irvin McCullough, at irvinm@whistleblower.org, with any questions.

Sincerely,

/s/

Scott A. Allen, MD, FACP
Professor Emeritus, University of California, School of Medicine
Medical Subject Matter Expert, CRCL, DHS

/s/

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Associate Professor, Gratiot Louisiana State University Health Sciences Center
Mental Health Subject Matter Expert, CRCL, DHS

/s/

Josiah D. Rich, MD, MPH
Professor of Medicine and Epidemiology
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Cc: Dana Gold, Esq. and Irvin McCullough, Government Accountability Project