



**By Email**

May 24, 2021

**Re: Protected Whistleblower Disclosure – Ongoing Risks of Harm from Detention to Migrant Children and Families**

Dear Committee Chairpersons and Ranking Members,

Below please find a written whistleblower disclosure from our clients, Drs. Scott A. Allen and Pamela McPherson, outlining the substantial danger to the health and safety of immigrant children and their families that is a direct consequence of current asylum and detention processes.

Drs. Allen and McPherson are physicians who currently serve as medical and mental health subject matter experts in detention health for the Department of Homeland Security's Office of Civil Rights and Civil Liberties (DHS CRCL). Together and individually, they have conducted numerous investigations of immigration detention facilities on CRCL's behalf, some of which have involved serious harms, including deaths, in family detention settings.

Drs. Allen and McPherson have raised concerns in the past two previous administrations about the ongoing and known risks to immigrant children in DHS detention. Drs. Allen and McPherson welcome the current administration's commitment to a humanitarian response to immigration detention and appreciate the effort to reduce the numbers of children in detention and the length of time they spend in border facilities. But as they and the medical community have expressed repeatedly to DHS and to Congress, detention causes foreseeable harm to children. They remain concerned that large numbers of families and children continue to be held, and will be held in the future, in detention settings despite the known risk of harm and when there are alternative humane models to responding to children and families arriving at the border.

Based on their medical expertise, Drs. Allen and McPherson urgently recommend the Department of Homeland Security to (1) abolish the detention of children in favor of a community-based asylum process, (2) abolish family detention in favor of a community-based asylum process supported by established humanitarian agencies, and (3) end Title 42 expulsions and permit families with children to cross the border together to be screened and vaccinated for COVID.

Drs. Allen and McPherson hope Congress will work to ensure that the protection of families and children from harm is paramount and informs U.S. immigration policies and practices. They would be happy to contribute their expertise in health and mental health to Congress in its efforts to urgently conduct oversight and promote reform to address the humanitarian concerns of immigrant detention.

Sincerely,

/s/

Dana L. Gold  
Counsel for Drs. Allen and McPherson  
Senior Counsel, Government Accountability Project

May 24, 2021

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

The Honorable John Katko  
Ranking Member  
House Committee on Homeland Security  
310 Cannon House Office Building  
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The Honorable Gary Peters  
Chairman  
Senate Committee on Homeland Security  
and Governmental Affairs  
340 Dirksen Senate Office Building  
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The Honorable Rob Portman  
Ranking Member  
Senate Committee on Homeland Security  
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The Honorable Richard Durbin  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
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The Honorable Charles Grassley  
Ranking Member  
Senate Committee on the Judiciary  
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The Honorable Carolyn Maloney  
Chairwoman  
House Committee on Oversight and Reform  
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The Honorable James Comer  
Ranking Member  
House Committee on Oversight and Reform  
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The Honorable Jerrold Nadler  
Chairman  
House Committee on the Judiciary  
2138 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 and an adult and child/adolescent psychiatrist—with expertise in medical care in detention settings.<sup>1</sup> We currently serve as subject matter experts for the Department

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<sup>1</sup>I, Dr. Scott Allen, am a board certified in Internal Medicine and is a Fellow of the American College of Physicians. I 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 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

of Homeland Security’s Office of Civil Rights and Civil Liberties (DHS CRCL), and have conducted numerous investigations of immigration detention facilities on CRCL’s behalf over the past seven years, some of which have involved serious harms, including deaths, in family detention settings. We are writing in our individual capacities and not on behalf of the Department.

We have raised concerns in the past two previous administrations—internally to CRCL, to the DHS Office of Inspector General, as well as to Congress—about the ongoing and known risks to immigrant families and children in DHS detention.<sup>2</sup> We welcome the current administration’s commitment to a humanitarian response to immigration detention and have been pleased to read media reports about the significant reduction in the high numbers of children in Customs and Border Patrol (CBP) holding facilities,<sup>3</sup> as well as success in the reunification of four families<sup>4</sup> who

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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 Health and Human Rights at Brown University 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 currently serve as 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 have qualified as a forensic psychiatry expert in juvenile and adult matters and have participated in research and presented at national and international conferences 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 have served 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.

<sup>2</sup> We submitted eleven family detention on-site investigation reports to CRCL in addition to numerous submissions to Congress and DHS outlining our concerns. See Drs. Scott Allen and Pamela McPherson, *Letter to Senate Whistleblower Caucus Chairs*, (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>; 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);

Drs. Scott Allen and Pamela McPherson, “Whistleblowers Renew Challenges to Family Detention,” Letter to House and Senate Judiciary, Senate Homeland Security and Gov’t Affairs, and House Homeland Security Committees, (March 19, 2019), <https://jayapal.house.gov/wp-content/uploads/2019/03/031919-whistleblowers-letter-to-Congress-w-cover-letter-fact-sheet-re-children-in-detention.pdf>

<sup>3</sup> Eileen Sullivan and Zolan Kanno-Youngs, “U.S. Shows Progress in Moving Migrant Children From Border Jails,” *New York Times* (April 30, 2021), <https://www.nytimes.com/2021/04/30/us/politics/biden-border-children.html>; Dep’t of Homeland Security Secretary Alejandro Mayorkas hearing testimony, “DHS Actions to Address Unaccompanied Minors at the Southern Border,” *U.S. Senate Committee on Homeland Security & Governmental Affairs Committee* (May 13, 2021), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Mayorkas-2021-05-13.pdf> (noting a “reduction of the total number of unaccompanied children in CBP custody from 5,767 at its peak on March 29th to 455 on May 11<sup>th</sup>” and that “the average time in custody for unaccompanied children has fallen from 133 hours on March 29th to 22 hours on the morning of May 11<sup>th</sup>.”)

<sup>4</sup> Camilo Montoya-Galvez, “Bident task force to arrange reunifications of 4 migrant families separated under Trump, and they could be the first of ‘many,’” *CBS News* (May 3, 2021), <https://www.cbsnews.com/news/biden-task-force-to-reunite-migrant-families-separated-under-trump/>.

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were forcibly separated during implementation of the former administration’s “zero tolerance” immigration policies.

Despite these significant strides in the right direction, large numbers of families and children continue to be held in detention settings, and as such these issues continue to warrant concern and congressional action. After seven years of working with DHS and Congress on efforts to mitigate harms to children and their families, based on our understanding of those harms as medical and mental health experts and as there are alternative humane models to responding to children and families arriving at the border, we are writing again to call for the end of detention of children and their families.

### **Harms of Detention to Children and Their Families is Well Established**

The fundamental flaw in child and family detention was clear from the outset. The medical evidence is indisputable: the detention of children is harmful to their health. Detention foreseeably leads to mental health issues such as Post-Traumatic Stress Disorder (PTSD) and suicidal or self-harming behaviors, neurodevelopmental disabilities, and chronic medical diseases such as diabetes and hypertension.<sup>5</sup> Detained children are denied the positive experiences of the support of a community and feeling safe and protected by an adult. New research shows that experiences such as these offer protective effects to counter the toxic stress of adverse childhood experiences (ACEs).<sup>6</sup> The very act of detaining children not only harms them, but also denies them the protective experiences necessary for recovery from toxic stress, which can result in lasting neurological changes and lifelong risks to health and mental health.

Not only are we on record in raising the alarm about known risks of harm to children in immigrant detention,<sup>7</sup> but we are joined by the broader medical community,<sup>8</sup> including the American Academy of Pediatrics (AAP),<sup>9</sup> American Medical Association (AMA),<sup>10</sup> American College of Physicians

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<sup>5</sup> Julie M. Linton, Marsha Griffin, and Alan J. Shapiro, "Detention of Immigrant Children." *American Academy of Pediatrics Publications* (2017), <https://doi.org/10.1542/peds.2017-0483>.

<sup>6</sup> Bethell, Christina, et al. "Positive childhood experiences and adult mental and relational health in a statewide sample: associations across adverse childhood experiences levels." *JAMA pediatrics* 173.11 (2019): e193007-e193007.

<sup>7</sup> See Fn. 2, supra.

<sup>8</sup> Academic Pediatric Association, American Academy of Pediatrics, American Association of Child & Adolescent Psychiatry, American College of Physicians, American Medical Association, et al, Letter to House Judiciary Committee, House Energy and Commerce Committee, House Homeland Security Committee, and House Appropriations Committee (July 24, 2018), [https://www.acponline.org/acp\\_policy/letters/letter\\_house\\_oversight\\_request\\_on\\_child\\_detention\\_centers\\_2018.pdf](https://www.acponline.org/acp_policy/letters/letter_house_oversight_request_on_child_detention_centers_2018.pdf); 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> (letters validating disclosures of Drs. Allen and McPherson regarding harm to children in detention and calling for oversight).

<sup>9</sup> American Academy of Pediatrics, "Seeking Safe Haven: Detention of Immigrant Children & Families," *HealthyChildren.org* (March 13, 2017), <https://healthychildren.org/English/healthy-living/emotional-wellness/Building-Resilience/Pages/Detention-of-Immigrant-Children.aspx>.

<sup>10</sup> Andis Robeznieks, "Congress Told Impact Of Immigrant Children’s Trauma May Be Lifelong." *American Medical Association*, (July 12, 2019), <https://www.ama-assn.org/delivering-care/population-care/congress-told-impact-immigrant-children-s-trauma-may-be-lifelong>.

(ACP),<sup>11</sup> American Psychological Association (APA),<sup>12</sup> American Psychiatric Association (APA),<sup>13</sup> as well as the DHS's own Advisory Committee on Family Residential Centers.<sup>14</sup>

We and these medical professional associations have further noted that in addition to the predictable adverse future physical and mental health consequences to children that result from detention, the conditions of DHS detention heighten the risk of harm, as CBP, ICE and its contractors consistently fail to meet minimum standards of care.<sup>15</sup>

### **Even With Lower Daily Detention Rates the Cycle of Detention Continues**

Despite the administration's success in reducing the number of unaccompanied minors in CBP detention—from a reported high of 5,767 in March to a reported low of 677 in late April<sup>16</sup>—we continue to have serious concerns about the risks of harm migrant children and families. These concerns are two-fold:

First, while the current number of children in border facilities is dramatically lower, *hundreds* of children remain in detention at the border and in other DHS and Department of Health and Human Services (HHS) detention facilities. This is hundreds too many, as we know that those already released, and those who remain, will suffer the known, harmful effects of detention.

Second, while DHS is now moving unaccompanied minors more quickly out of CBP detention facilities and into influx facilities run by the HHS Office of Refugee Resettlement (ORR), reports of the transfer process resulting in teens being held in busses for extended periods reveal that the challenges of protecting children do not disappear by rapidly releasing them from border facilities to become the responsibility of a different agency and detention setting.<sup>17</sup> We are deeply concerned

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<sup>11</sup> American College of Physicians, "ACP Says Family Detention Harms The Health Of Children, Other Family Members," *ACP Newsroom* (July 5, 2018), <https://www.acponline.org/acp-newsroom/acp-says-family-detention-harms-the-health-of-children-other-family-members>

<sup>12</sup> Jessica Henderson Daniel, "Statement Of APA President Regarding Administration's Proposal To Detain Child Migrants Longer Than Legally Allowed," American Psychological Association (Sept. 16, 2018), <https://www.apa.org/news/press/releases/2018/09/detain-child-migrants>.

<sup>13</sup> Saul Levin, "APA Letter to U.S. Commission on Civil Rights, re: Comments on Immigration Detention Centers and Treatment of Immigrants," *American Psychiatric Association* (May 13, 2019), <https://www.psychiatry.org/File%20Library/Psychiatrists/Advocacy/Federal/APA-Letter-USCoCR-Immigration-Detention-05132019.pdf>

<sup>14</sup> 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>.

<sup>15</sup> See fn. 2, supra; fn. 19, infra. Also see, e.g., "Capping Report: CBP Struggled to Provide Adequate Detention Conditions During the 2019 Migrant Surge," *Department of Homeland Security Office of Inspector General*, OIG-20-38 (June 12, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-38-Jun20.pdf>; Majority Staff Report, "ICE Detention Facilities: Failing to Meet Basic Standards of Care," *U.S. House of Representatives Committee on Homeland Security* (September 22, 2020), <https://homeland.house.gov/imo/media/doc/Homeland%20ICE%20facility%20staff%20report.pdf>

<sup>16</sup> "Child migrants: Massive drop in children held by border officials," *BBC News* (May 5, 2021), <https://www.bbc.com/news/world-us-canada-56405009>.

<sup>17</sup> Dianne Solis, "Migrant teens housed on bus outside Dallas convention center raise more welfare questions," *Dallas Morning News* (May 13, 2021), <https://www.dallasnews.com/news/2021/05/13/migrant-teens-on-bus-overnight-near-dallas-convention-center-raises-more-welfare-questions-among-advocates/>; Eileen Sullivan, "For Migrant Children in

that an ongoing cycle of subjecting immigrant children to some form of detention is inevitable under current policy and practice due to the continuation of a policing and detention-based approach to families seeking refuge.

### **Perverse Impact of Title 42**

The implementation of Title 42, under which the administration is prohibiting entry to or expelling immigrants from the United States on the grounds that they pose a public health threat because of the risk of introducing COVID-19 from Mexico, is having the perhaps unintended, but wholly predictable, consequence of creating a churn of children who will be foreseeably held in detention. Since unaccompanied minors are exempted from Title 42, families with children are either remaining in unsafe conditions on the Mexican side of the border, or increasingly, are sending minor children on ahead to cross the border alone.<sup>18</sup>

The CDC's top scientists and expert epidemiologists found no legitimate basis the public health basis for implementing Title 42 even at the time of its implementation at the beginning of the pandemic.<sup>19</sup> There is even less of a public health justification now, when, more than a year later, arriving asylum seekers could be easily screened and tested, and currently those over 16 vaccinated, in a way that protects the public health.<sup>20</sup>

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Federal Care, a "Sense of Desperation," *New York Times* (May 18, 2021), <https://www.nytimes.com/2021/05/18/us/politics/biden-migrant-children.html>.

<sup>18</sup> American Immigration Council, "Rising Border Encounters in 2021: An Overview and Analysis," (April 2021), [https://www.americanimmigrationcouncil.org/sites/default/files/research/rising\\_border\\_encounters\\_in\\_2021.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/rising_border_encounters_in_2021.pdf). Since November 2020, unaccompanied children have been exempted from expulsion under Title 42, even as the Biden administration has otherwise maintained the implementation of Title 42 initiated by the prior administration. *Ibid.* Also *see* Associated Press, "Judge orders Trump administration to stop expelling children who cross border alone," *NBC News* (November 18, 2020), <https://www.nbcnews.com/news/latino/judge-orders-trump-admin-stop-expelling-children-who-cross-border-n1248146>, and the Biden administration.

<sup>19</sup> Jason Dearen and Garance Burke, "Pence orders borders closed after CDC experts refused," *AP* (October 3, 2020), <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>.

<sup>20</sup> I, Dr. Allen, should note that I, along with my colleague Dr. Josiah Rich, have raised concerns to CRCL and Congress, as well as to the White House Coronavirus Response Team and the COVID-19 Health Equity Task Force, about how detention in all ICE facilities should be minimized to the greatest extent possible to reduce the risk of harm and spread of COVID-19 to immigrant detainees, workers, and the public at large, and that screening, testing and vaccinating at facilities is critical to controlling the pandemic. Just as Title 42 is not necessary to control the spread of COVID-19 in the U.S., neither is ICE detention, the latter of which has proven, as we warned at the beginning of the pandemic, to be one of the deadliest and most significant sources of COVID spread, and which. Alternatives to all detention of immigrants is warranted in light of the ongoing inability of ICE and its contractors to responsibly care for those in their custody. *See, e.g.*, Written Statement of Dr. Scott A. Allen, *Examining Best Practices for Incarceration and Detention During COVID-19*, before the U.S. Senate Committee on the Judiciary (June 2, 2020), <https://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>; Isabelle Niu, Emily Rhyne and Aaron Byrd, "How ICE's Mishandling of Covid-19 Fueled Outbreaks Around the Country," *New York Times* (April 25, 2021), <https://www.nytimes.com/video/us/100000007707896/immigration-detention-covid.html>; U.S. House of Representatives Committee on Homeland Security Majority Staff Report, "ICE Detention Facilities: Failing to Meet Basic Standards of Care," Committee on Homeland Security Press Release (September 21, 2020), <https://homeland.house.gov/imo/media/doc/Homeland%20ICE%20facility%20staff%20report.pdf>; Rep. Kathleen Rice, Dr. Scott Allen, et al, "Virtual Forum: ICE Detention Facilities: Failing to Meet Basic Standards of Care," Committee on Homeland Security (Sept. 21, 2020), <https://homeland.house.gov/activities/other-events/ice-detention-facilities-failing-to-meet-basic-standards-of-care>

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The COVID-19 pandemic no longer requires the blunt instrument of Title 42, especially while that policy has the consequence of forcing asylum seeking families to choose the “lesser” risk of sending their unaccompanied minor children into the U.S. detention system over the risks of violence in their own countries and the Mexico border that have driven them to seek asylum in the first place. Title 42 forces this choice among asylum seeking families, and by consequence, it not only creates a flow of children into U.S. detention, but also results in *de facto* separation of children from their families, just on the Mexican side of the border.

We are concerned that ICE Director Tae Johnson’s recent testimony before the House Appropriations Committee expressing the value of using Title 42 to relieve “pressure on our immigration system” comes at the expense of immigrant children.<sup>21</sup>

### **Child and Family Detention is Harmful and Unnecessary**

We realize that solutions to detention are difficult and complex, and will become increasingly so when Title 42 is no longer used to exclude or expel immigrants from the U.S. and the numbers seeking entry increase. But we cannot stress strongly enough that detaining families and children causes foreseeable harm and should only be used as a measure of last resort. Historically, in the modern era, civilized societies only detain children in the most extreme cases when the children themselves present a risk to public safety.<sup>22</sup> Detention focused policy reform alone has been insufficient to protect vulnerable immigrant populations from harm in ICE detention. In our professional opinion, there is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers. As there are family-oriented and community focused alternatives to family detention (such as the Family Case Management Program<sup>23</sup> and other proven alternatives<sup>24</sup>), and the risk of lasting physical and mental health injury associated with child

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<sup>21</sup> ICE Acting Director Tae Johnson, “ICE Acting Director Johnson Testifies Before the House on ICE Priorities,” *C-SPAN* (May 13, 2021), <https://www.c-span.org/video/?511611-1/ice-acting-director-johnson-testifies-house-ice-priorities&live#>

<sup>22</sup> Lauren Brinkley-Rubenstein, Scott A. Allen, Josiah D. Rich, “Incarceration and the health of detained children.” *Lancet Public Health*, 5, no. 2 (January 16, 2020): e76-e77, [https://doi.org/10.1016/S2468-2667\(19\)30250-6](https://doi.org/10.1016/S2468-2667(19)30250-6)

<sup>23</sup> David Secor, Heidi Altman and Tara Tidwell Cullen “A Better Way: Community-Based Programming as an Alternative to Immigrant Detention,” *National Immigrant Justice Center* (2019), <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>; Ruthie Epstein, “The Tried-And-True Alternatives To Detaining Immigrant Families.” *American Civil Liberties Union* (2018), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/tried-and-true-alternatives-detaining>.

<sup>24</sup> American Immigration Council, “Community Support for Migrants Navigating the U.S. Immigration System,” *Women’s Refugee Commission* (February 2021), [https://www.womensrefugeecommission.org/wp-content/uploads/2021/03/Community\\_Support\\_for\\_Migrants\\_Navigating\\_the\\_US\\_Immigration\\_System.pdf](https://www.womensrefugeecommission.org/wp-content/uploads/2021/03/Community_Support_for_Migrants_Navigating_the_US_Immigration_System.pdf); Ruthie Epstein, “ACLU Fact Sheet On Alternatives To Immigration Detention (ATD).” *American Civil Liberties Union* (2021), <https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd>.

detention is so high,<sup>25</sup> we again recommend that DHS immediately end the practice of detaining children and their parents for immigration purposes.

Again, we laud and support current efforts to reduce detention of migrant families and children. But because the harms are well-understood and significant, the goal of limiting detention of children—and preventing and addressing past, present and future harm experienced by detained children—must be a priority for immigration policies and practices.

We were similarly encouraged, shortly after we sent a letter in February 2021 internally to CRCL outlining our concerns about the ongoing risk of harm to children in detention, by reports about the new administration's decision to turn Family Residential Centers into rapid transfer stations to limit family detention,<sup>26</sup> followed by a March 5, 2021 court filing by ICE claiming its intent to keep families detained together for three days or less at the 2,400-bed detention center in Karnes City and the 839-bed detention center in Dilley in Texas (both sites we have investigated multiple times since 2014).<sup>27</sup> If this can be achieved, it is a step in the right direction, but not an end point, because again, any amount of detention can be harmful to children.

We remain concerned, however, that the intention to limit detention of families and children has not occurred in full or with adequate alacrity to prevent harm. Again, while relieved that there have been significant reductions in the thousands of unaccompanied children that have been in Border Patrol custody past the legal time limit,<sup>28</sup> there are still major safety concerns in these congregate settings that are likely to remain as more children seek asylum at the border because of Title 42.<sup>29</sup> The reports of children at emergency processing sites sleeping on mats in overcrowded quarters reflect the challenges of preventing, let alone treating, the harm inflicted on children in detention settings.<sup>30</sup>

Additionally, just days after ICE represented in court its intention to limit detention at family facilities to 72 hours, a senior ICE official contradicted that position, indicating that the Biden-

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<sup>25</sup> Rhitu Chatterjee, "Lengthy Detention Of Migrant Children May Create Lasting Trauma, Say Researchers." *NPR* (2019), <https://www.npr.org/sections/health-shots/2019/08/23/753757475/lengthy-detention-of-migrant-children-may-create-lasting-trauma-say-researchers>

<sup>26</sup> Maria Sacchetti, Nick Mirotti and Silvia-Foster-Frau, "Texas family detention centers expected to transform into rapid-processing hubs," *The Washington Post* (March 4, 2021), [https://www.washingtonpost.com/immigration/texas-family-detention-centers-changed/2021/03/04/6a0bfa8a-7b6f-11eb-b3d1-9e5aa3d5220c\\_story.html](https://www.washingtonpost.com/immigration/texas-family-detention-centers-changed/2021/03/04/6a0bfa8a-7b6f-11eb-b3d1-9e5aa3d5220c_story.html)

<sup>27</sup> Julia Ainsley, "In court filing, ICE says it is effectively ending use of family detention," *NBC News* (March 6, 2021), <https://www.nbcnews.com/politics/immigration/court-filing-ice-says-it-effectively-ending-use-family-detention-n1259818>

<sup>28</sup> Camilo Montoya-Galvez, "Backlog of migrant children in Border Patrol custody soars to 4,200, with 3,000 held past the legal limit," *CBS News* (March 16, 2021), <https://www.cbsnews.com/news/immigration-migrant-children-border-patrol-custody-4200-past-legal-limit/>

<sup>29</sup> Nomaan Merchant and Adriana Gomez Licon, "Emergency sites for children raising concerns," *AP News* (March 18, 2021), <https://apnews.com/article/emergency-sites-migrant-children-safety-concerns-a916d523629b6fd7ffbd2061b8dd8721>

<sup>30</sup> Miriam Jordan, Simon Romero and Zolan Kanno-Youngs, "Children Are Sleeping on Mats in Overcrowded Border Facilities," *New York Times* (March 15, 2021), <https://www.nytimes.com/2021/03/15/us/border-migrant-children-texas.html>



Harris administration is “not ending family detention” and that the facilities may hold families through the 20-day legal limit.<sup>31</sup>

Knowing that there are unfixable systemic weaknesses in the ability of the government and its contractors to manage mass detention in a way that mitigates the known adverse effects to children from detention,<sup>32</sup> the current system is one of knowing infliction of long-term mental and physical harm.

### **The Humane and Acceptable Alternative to Children and Family Detention**

An enforcement-based policing approach was never the best way to address children and families attempting to apply for asylum in the U.S. These children and their families do not present a security threat or a public safety threat to justify a dangerously punitive program involving detention in closed and secure facilities.

Over the past seven years we have met these children and their families and heard their stories. They are human beings who find themselves in untenable situations and are simply asking for help. They deserve to be treated humanely. The current approach employing apprehension, confinement, and contract support from private prison companies is an entirely inappropriate response to child and family asylum seekers. And indeed, it is an explicitly punitive approach: it has been the intent of family detention, under both the Obama and Trump administrations in which we also served, to deter others from seeking asylum in the U.S.<sup>33</sup> At a time when America is undergoing serious

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<sup>31</sup> Julia Ainsley, “Despite court filings and public rhetoric, official says Biden administration is ‘not ending family detention,’” *NBC* (March 9, 2021), <https://www.nbcnews.com/politics/immigration/despite-court-filings-public-rhetoric-official-says-biden-admin-not-n1260283>

<sup>32</sup> Our attorney summarized our concerns noted in prior communications with Congress and to DHS accurately this way: “In addition to their overarching warnings that detention, for any amount of time, harms children, their specific concerns about systemic weaknesses at detention facilities included the lack of qualified medical and mental-health professionals; a lack of language translators making diagnoses exceedingly difficult; inadequate and dangerous facilities posed by the retrofitted prisons used to house families with small children; failure to provide trauma informed care; lack of training of custodial staff to care for at-risk children; inadequate detention standards; and confusing lines of authority and weak coordination between different agencies, program partners and government departments that can cause dangerous communication breakdowns and accountability failures that put children at risk.” Dana L. Gold, “Written Statement for the Record for the House Committee on the Judiciary Hearing on The Expansion and Troubling Use of ICE Detention,” *Government Accountability Project* (September 25, 2019), <https://www.congress.gov/116/meeting/house/110017/documents/HHRG-116-JU01-20190926-SD008.pdf>. See also fn. 2, *supra*.

<sup>33</sup> Dora Schriro, “Weeping in the Playtime of Others: The Obama Administration’s Failed Reform of ICE Family Detention Practices,” *Journal on Migration and Human Security*, 5, No. 2 (2017): 452-480, <https://journals.sagepub.com/doi/pdf/10.1177/233150241700500212> (“In June 2014, the administration announced that it would pursue wide-scale detention of mothers and children to deter other families from seeking asylum in the United States. DHS Secretary Johnson told Congress, ‘Our message is clear to those who try to illegally cross our borders: You will be sent back home.’ Underscoring the department’s resolve, he added that the government was ‘building additional space to detain these groups and hold them until their expedited removal orders are effectuated (DHS 2014b).’” Schriro, 463. (Schriro served as the first director of ICE’s Office of Detention Policy and Planning under the Obama administration); Senate Homeland Security and Governmental Affairs Committee Hearing on The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives (September 18, 2018) at 1:39:00-1:44:20, <https://www.hsgac.senate.gov/hearings/the-implications-of-the-reinterpretation-of-the-flores-settlement-agreement-for-border-security-and-illegal-immigration-incentives> (ICE Deputy Commissioner Robert

reflection regarding the intersection of over-policing and institutional racism, the unjustifiable harms to disproportionately non-white asylum-seeking families should not be casually dismissed.<sup>34</sup>

Humane models for safely responding to refugees and asylum seekers have always existed. These models prioritize health and safety and lead with a humanitarian response that first provides for the basic human needs including food, shelter, clothing, family reunification, social, legal, medical and mental health supports. Non-profits with experience in managing migrant influxes, when provided with adequate funding and unrestricted access to the migrants, are adept at meeting the basic needs of the population on arrival and facilitating their safe and secure placement within the community. This can be done in a way that protects public health and safety. These humane, nonprofit models allow for an orderly process that secures the health and safety of the migrants while they begin the asylum process.

### **Supporting Alternative Pathways to Perilous Overland Journeys for Children and Families seeking asylum**

In addition, the U.S. must work with governments in the countries that asylum seekers are fleeing in order to create viable alternatives for families so that they no longer need to undertake the perilous journey to the U.S. southern border, a process that also substantially endangers children and their families. In the 1980's when thousands of Vietnamese refugees fleeing Vietnam were being lost at sea, the U.S. established the Orderly Departure Program (ODP), a program that created a safe pathway by allowing application for resettlement within Vietnam.<sup>35</sup> Over 458,000 Vietnamese refugees were able to be safely processed within their country of origin, thereby ending the necessity of the perilous journey by sea.<sup>36</sup> Clearly, this is a more humane approach, and similar orderly programs need to be supported for asylum seekers from the Northern Triangle countries that account for the greater part of recent migration.

### **Conclusion**

Migrant children and their families undertake great risk out of desperation, and they are asking for our help. Our first duty is to provide humanitarian support in a safe and healthy community-based environment, and only when that is secured can we process their asylum claims. For too long, we have put detention and punishment ahead of health and safety, confinement ahead of care.

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Perez explicitly stating, when asked by Senator Hassan (D-NH) why DHS was seeking to promote indefinite detention in the face of the opinion of DHS's own medical experts (namely us), the consensus of the medical community, and the recommendation of DHS's own Advisory Committee in 2016, all asserting that detention causes serious harm to children, that the goal of the detention policy was to send a message of deterrence).

<sup>34</sup> Confinement and family separation have a long history of being differentially applied to people of color in the United States as instruments of social control including native Americans, African Americans and interred Japanese, among others. *See* Schriro, *ibid.* at 453.

<sup>35</sup> In the early 1980's, prior to medical school, Dr. Allen worked for the U.S. Embassy in Thailand in the Refugee Program and saw first-hand the transition from arrivals of refugees by boat to the successful launch of the Orderly Departure Program.

<sup>36</sup> Fact Sheet, "Refugee Admissions Program for East Asia," *U.S. Department of State* (January 16, 2004), <https://2001-2009.state.gov/g/prm/rls/fs/2004/28212.htm>.

Letter from Drs. Scott A. Allen and Pamela McPherson to Congress on the Ongoing Risks of Harm from Detention to Migrant Children and Families

In closing, as physicians and medical experts concerned about the significant health and safety threats that children and their families are exposed to as a direct consequence of our asylum and detention processes, we urgently recommend the following:

1. Abolish the detention of children in favor of a community-based asylum process.
2. Abolish family detention in favor of a community-based asylum process supported by established humanitarian agencies.
3. End Title 42 expulsions and permit families with children to cross the border together to be screened and vaccinated for COVID.

We hope that Congress will work to ensure that the protection of families and children from harm is paramount and informs U.S. immigration policies and practices.

We would be happy to contribute our expertise in health and mental health to Congress in its efforts to urgently conduct oversight and promote reform to address the humanitarian concerns of immigrant detention, as well of course to the Reunification Task Force, the Department of Homeland Security, or other mechanisms established to address the past, ongoing and future adverse medical and mental health effects of detention on children. Our legal counsel, Dana Gold at the Government Accountability Project, is supporting and coordinating our efforts to communicate these serious issues to you and other oversight entities. Please contact Ms. Gold, at [DanaG@whistleblower.org](mailto:DanaG@whistleblower.org), or her colleague, Irvin McCullough, at [IrvinM@whistleblower.org](mailto:IrvinM@whistleblower.org), with any questions.

Sincerely,



Scott A. Allen, MD, FACP



Pamela McPherson, MD

Cc: Katherine Culliton-González, Officer, DHS CRCL