



By Email

June 25, 2021

Re: Protected Whistleblower Disclosure from DHS CRCL Medical Experts on Ongoing Dangers to Workers, Immigrants, and the Public from COVID-19 in Immigration Detention Settings

Dear Committee Chairpersons and Ranking Members,

Below please find a written whistleblower disclosure from our clients, Drs. Scott A. Allen, Pamela McPherson, and Josiah “Jody” Rich, outlining pressing issues relating to substantial and specific dangers to the health and safety of immigrant detainees, workers and the public posed by the spread of COVID-19 in immigrant detention settings that have yet to be addressed by the Centers for Disease Control and Prevention (CDC), the Department of Homeland Security (DHS), the White House Coronavirus Response Team, or other publicly available COVID response plans.

Drs. Allen, McPherson, and Rich are physicians who currently serve as contracted 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). They raised concerns in the past administration in February and March 2020, at the beginning stages of the coronavirus pandemic, to CRCL leadership and Congress about the need to proactively mitigate the spread of COVID-19 in the congregate settings of immigration detention, warning that failing to dramatically reduce populations in detention, limit transport and transfers of immigrant detainees, and implement protocols for testing, screening, isolation and quarantine would create a tinderbox scenario of a large cohort of people getting sick at once.

Drs. Allen, McPherson, and Rich renewed their warnings about the ongoing risks posed by the spread of COVID in immigration detention with leadership in the current administration, writing to CRCL in February 2021 and to the White House Coronavirus Response Team and the COVID-19 Health Equity Task Force in March 2021. They are writing now to Congress as populations are now rising again in immigration detention, transfers are continuing unabated, and there is no federal plan to vaccinate immigrants in detention. As such the same risks continue to threaten the lives of immigrants, staff and the surrounding communities from COVID.

Based on their medical expertise, Drs. Allen, McPherson, and Rich urgently recommend the Department of Homeland Security and White House: (1) develop and support a comprehensive COVID plan for detention, (2) prioritize detainees for the vaccination at the same priority level as staff, (3) secure vaccine supplies to support universal vaccination for the detained population and distribute them to facilities in a timely manner, and (4) address the well-known mental health consequences of the pandemic.

Drs. Allen, McPherson, and Rich hope Congress will work to ensure that the protection of detainees, workers and the public from harm is paramount and informs U.S. immigration detention policies and practices. They would be happy to contribute their expertise in detention to Congress in its efforts to urgently conduct oversight and promote reform to address the risk of the spread of COVID in immigration detention.

Sincerely,

/s/

Dana L. Gold

Counsel for Dr. Scott A. Allen, Dr. Pamela McPherson, and Dr. Josiah “Jody” Rich
Senior Counsel, Government Accountability Project

June 25, 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
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The Honorable Gary Peters
Chairman
Senate Committee on Homeland Security
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The Honorable Rob Portman
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The Honorable Richard Durbin
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The Honorable Charles Grassley
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The Honorable Jerrold Nadler
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The Honorable Jim Jordan
Ranking Member
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Dear Committee Chairpersons and Ranking Members:

We are physicians (an internist, an adult and child/adolescent psychiatrist, and an infectious disease specialist) with expertise in medical care in detention settings.¹ We currently serve as medical and

¹I, 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 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, now the *Center for Health and Justice Transformation*, 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.

mental health subject matter experts for the Department 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.

We are writing to share our concerns about pressing issues relating to health and safety of immigrant detainees, workers and the public posed by the spread of COVID-19 in immigrant detention settings that have yet to be addressed by the Centers for Disease Control and Prevention (CDC) or other publicly available COVID response plans. We raised these concerns in the former administration to CRCL leadership and with Congress at the beginning of the coronavirus pandemic,² and raised them again with new CRCL leadership after the first month of the current administration taking office, who we understand shared it widely within the new Administration. Because the problems we warned about in immigrant detention settings have largely continued unabated, in March of this year we shared our concerns with the White House Coronavirus Response Team and the COVID-19 Health Equity Task Force Members, urging them to develop a comprehensive COVID plan for detention that creates "detailed standards and guidance that

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.

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 over 200 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 (now the *Center for Health and Justice Transformation* (www.healthandjustice.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. In 2018, I was elected into the *National Academy of Medicine*.

² Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH, Letter to Congress (March 19, 2020),

<https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>;

Catherine Shoichet, "Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention, *CNN* (March 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>; Written Statement of Dr. Scott Allen, *Examining Best Practices for Incarceration and Detention During COVID-19*, before the Senate Committee on the Judiciary (June 2, 2020), <https://whistleblower.org/wp-content/uploads/2020/06/Scott-Allen-Written-Testimony-SJC.pdf>

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maximize standard infection control practices (hygiene and PPE), optimal testing strategies, and early and aggressive vaccination efforts.”³

The Biden administration has made great strides in controlling the pandemic in many areas of the country, largely by concentrating on vaccine distribution to the general public. Immigrant detention settings, however, continue to be a significant source of spread for COVID and disproportionate harm to detainees, workers and the public, yet DHS has still not implemented a comprehensive plan to address the spread of COVID in immigration detention facilities. While we continue to share our concerns with the DHS in the course of our work, it is imperative that Congress be aware of ongoing and known risks of harm posed by COVID-19 in immigration detention and the impact on the overall public health of surrounding communities.

The DHS and White House Must Develop a Comprehensive COVID Plan for Immigration Detention Settings

As COVID is easily spread in congregate settings, the COVID pandemic has presented unique challenges to immigration detention. The Centers for Disease Control and Prevention was slow to provide effective guidance regarding containment strategies in detention settings, and those guidelines that were provided were associated with failure.⁴ To date there have been 17,926 positive cases with 681 known positive cases currently in custody, and at least nine detainee deaths due to COVID.⁵ In Customs and Border Protection (CBP), 8885 federal employees have tested positive and 32 federal employees have died.⁶ According to press reports, Stewart Detention Center in Georgia is currently experiencing a COVID outbreak.⁷ Reports of more transmissible COVID variants raise the stakes for high risk congregate settings such as detention centers and their surrounding communities. And while the number of detainees dropped since the start of the pandemic, the numbers are increasing rather than decreasing, the population having risen by 34%

³ Scott A. Allen, MD, FACP, Pamela McPherson, MD and Josiah Rich, MD, MPH, Letter to the White House Coronavirus Response Team and COVID-19 Health Equity Task Force Members (March 12, 2021), <https://whistleblower.org/wp-content/uploads/2021/06/031221-Ltr-to-COVID-Response-Team-Health-Equity-Task-Force-fr-detention-health-experts.pdf>

⁴ Written Statement of Dr. Scott Allen, *Examining Best Practices for Incarceration and Detention During COVID-19*, before the Senate Committee on the Judiciary (June 2, 2020), <https://whistleblower.org/wp-content/uploads/2020/06/Scott-Allen-Written-Testimony-SJC.pdf>.

⁵ ICE Guidance on COVID-19, “COVID-19 ICE Detainee Statistics by Facility as of 2/17/2021,” U.S. Immigration and Customs Enforcement (last visited June 23, 2021), <https://www.ice.gov/coronavirus#citations>. The death count for detainees may be higher, since ICE only tracks deaths in custody, not those who may have contracted COVID in detention and died after being released or deported. See Dan Glau, “How ICE Data Undercounts COVID-19 Victims,” *PBS Frontline* (August 11, 2020), <https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/>. Further, ICE has not reported the number of illnesses or deaths among its contractor staff, even though as of January 2020, 81% of people in ICE detention are in contractor operated facilities. See American Civil Liberties Union, Human Rights Watch and National Immigrant Justice Center, “Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration,” *ACLU* (2020), <https://www.aclu.org/report/justice-free-zones-us-immigration-detention-under-trump-administration>

⁶ U.S Customs and Border Protection, “CBP Confirmed COVID-19 Cases,” CBP COVID-19 Updates and Announcements (last visited June 24, 2021), <https://www.cbp.gov/newsroom/coronavirus>

⁷ Andy Miller, “Stewart County Becomes COVID-19 Hot Spot As Cases Rise At Detention Center,” *Georgia Health News* (June 21, 2021), <https://www.georgiahealthnews.com/2021/06/stewart-county-covid-hot-spot-cases-rise-detention-center/>

since the end of the former administration.⁸ On a per capita basis, rates of infection reveal high rates of transmission and warrant more aggressive containment efforts.

In the course of recent investigations conducted on behalf of CRCL, we have asked for but have not yet seen a comprehensive and appropriately aggressive COVID specific plan for ICE and CBP detention. Early in the pandemic, we made recommendations regarding population reduction given the public health risks associated with continued detention.⁹ We also continue to have concerns about testing strategies and their actual implementation to guide isolation, quarantine and cohorting.¹⁰ We have seen inconsistent masking requirements for detainees and staff. The failure of ICE and its contractors to comply with applicable standards of care is well documented and which we have noted in our investigations for CRCL and previous disclosures to Congress,¹¹ has only worsened during COVID pandemic.¹²

Currently there does not appear to be an adequate comprehensive DHS plan for COVID-19 vaccination for the detained population. CDC guidelines for COVID-19 vaccine in detention prioritize detention staff, but leave the decision on detainees to local authorities.¹³ Statements by ICE have suggested that ICE too believes it is the responsibility of local health authorities – and not ICE – to distribute vaccine to their facilities.¹⁴ However, as both the detaining authority and the

⁸ Daniel Gonzalez, Arizona Republic and Maria Clark, “COVID-19 cases spiking again at some ICE detention centers. Critics say ICE failed to vaccinate detainees,” *AZCentral* (May 27, 2021), <https://www.azcentral.com/story/news/politics/immigration/2021/05/27/covid-19-cases-spiking-again-at-some-ice-detention-centers/5210208001/> (reporting that there were 14,195 immigrants in ICE detention at the end of the Trump administration to 19,041 as of May 13, 2021).

⁹ Scott Allen and Josiah “Jody” Rich, Letter to House Committee on Homeland Security, House Committee on Oversight and Reform, and Senate Committee on Homeland Security and Governmental Affairs, (March 19, 2020), <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>

¹⁰ *Ibid.*

¹¹ *Ibid.* See also Dr. Scott Allen and Dr. Pamela McPherson, Letter to Senate Whistleblower Caucus Chairs from Drs. Scott Allen and Pamela McPherson (July 17, 2018), <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>

¹² See, e.g., 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://www.aclu.org/sites/default/files/field_document/justice-free_zones_immigrant_detention_report_aclu_hrw_nijc_0.pdf](https://homeland.house.gov/activities/other-events/ice-detention-facilities-failing-to-meet-basic-standards-of-care; Staff Report, Committee on Oversight and Reform and Subcommittee on Civil Rights and Civil Liberties, “The Trump Administration’s Mistreatment of Detained Immigrants: Deaths and Deficient Medical Care by For-Profit Detention Contractors,” U.S House of Representatives (September 2020), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf; See ACLU, Human Rights Watch and National Immigrant Justice Center, “Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration,” <i>American Civil Liberties Union</i> (2020), <a href=)

¹³ Centers for Disease Control and Prevention, “COVID-19 Vaccine FAQs in Correctional and Detention Centers (Updated June 1, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html>.

¹⁴ Ana B. Ibarra, “Immigration detention centers showcase California’s vaccine chaos,” *Cal Matters* (February 22, 2021), <https://calmatters.org/health/coronavirus/2021/02/immigrants-detention-centers-vaccine/> (“COVID-19 vaccines for ICE detainees are being allocated by local and state health departments, and were incorporated into the total

body overseeing national distribution of COVID-19 vaccine, the federal government has the responsibility to secure vaccines for detainees in their custody and control and ensure that they get vaccinated in a timely manner. The current plan of leaving vaccination procurement for individuals detained by ICE to local health authorities obscures lines of responsibility and is likely to fail.

As of June 22, 2021, there were only 26,197 individuals held in ICE detention.¹⁵ In his May 13, 2021 written testimony before Congress, Acting ICE Director Tae Johnson reported that only 1,229 ICE detainees had been fully vaccinated (an additional 1,478 have had one dose).¹⁶ In contrast, to date, the Federal Bureau of Prisons has administered 197,206 doses of COVID vaccine to inmates in custody.¹⁷ Given the sole responsibility of the detaining authority to protect the health of individuals it detains, universal vaccination for a potentially life-threatening infectious disease associated with high risk of transmission in congregate settings is not an unreasonable standard of care. In fact, the federal government has an ethical – if not legal – obligation to provide timely access to COVID-19 vaccination to detainees.¹⁸

Therefore, we continue to urge that DHS develop a comprehensive COVID plan for detention and that the White House Coronavirus Response Team and CDC provide support for this objective. Such a plan should create detailed standards and guidance that maximize standard infection control practices (hygiene and PPE), reduction in transfers between facilities, decreased populations to allow for social distancing, optimal testing strategies, and early and aggressive vaccination efforts.

With the advent of vaccines, we recommend that detainees receive the same priority as staff for the vaccination as **the risk for detainees is equivalent to the risk for the staff.**¹⁹

Further, the federal government must secure vaccine supplies to support universal vaccination for the detained population and distribute them to facilities in a timely manner.

COVID-19 vaccine amount distributed by the federal government to each state,” an ICE spokesperson said in an emailed statement.”)

¹⁵ ICE Guidance on COVID-19, “COVID-19 ICE Detainee Statistics by Facility as of 6/23/2021,” U.S. Immigration and Customs Enforcement (last visited June 24, 2021), <https://www.ice.gov/coronavirus#citations>

¹⁶ DHS ICE Acting Director Tae D. Johnson, “Statement Regarding a Hearing on ‘U.S. Immigration and Customs Enforcement Resource Management and Operational Priorities,’” *U.S. House of Representatives Committee on Appropriations Subcommittee on Homeland Security*, (May 13, 2021), <https://docs.house.gov/meetings/AP/AP15/20210513/112599/HHRG-117-AP15-Wstate-JohnsonT-20210513.pdf>

¹⁷ Federal Bureau of Prisons, “COVID-19 Vaccine Implementation,” *FBOP COVID-19 Coronavirus* (last visited June 24, 2021), <https://www.bop.gov/coronavirus/index.jsp>

¹⁸ Carlo Foppiano Palacios, M.D. and Mark A. Travassos, M.D., “Vaccinating Detained Migrants against SARS-CoV-2 — Preventing Another Tragedy,” *New England Journal of Medicine* 384:e5 (January 14, 2021), DOI: 10.1056/NEJMPv2035416, <https://www.nejm.org/doi/full/10.1056/NEJMPv2035416>

¹⁹ Centers for Disease Control and Prevention, “Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States,” CDC Vaccines & Immunizations (page last reviewed June 24, 2021), <https://www.cdc.gov/vaccines/covid-19/phased-implementation.html> (“Residents or patients with a known COVID-19 exposure in congregate healthcare settings (e.g., long-term care facilities) or congregate non-healthcare settings (e.g., correctional and detention facilities, homeless shelters) may be vaccinated. In these settings, exposure to and transmission of SARS-CoV-2 can occur repeatedly for long periods of time, and healthcare personnel and other staff are already in close contact with residents.”)

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Finally, the plan should also **address the well-known mental health consequences of the pandemic.**²⁰ Detained populations are at increased risk for mental health issues and have suffered greatly during the pandemic.²¹ This is an already vulnerable population. Isolation to prevent the spread of COVID-19 may have serious implications. Prolonged isolation is associated with increased risk of self-harm and other poor mental health outcomes.²² We reissue our call for full implementation of trauma informed care²³ and highlight the importance of screening for mental health issues and providing the necessary care.

We are sharing these concerns and recommendations consistent with our duties as professionals to report dangers to public health and safety. We continue to work closely with the Office of Civil Rights and Civil Liberties within DHS as detention health experts, and we are equally willing to share our expertise and experience with the DHS immigration detention system with Congress to help address the ongoing risk of harm to detainees, workers and the public posed by the spread of COVID in immigrant detention.

Thank you for your consideration and commitment to addressing the ongoing risks posed by the coronavirus pandemic in immigration detention settings. 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. We look forward to aiding you in any way possible, including briefing relevant congressional staff and committee members and their staff on potential routes forward. Please contact Ms. Gold, at DanaG@whistleblower.org, or her colleague, Irvin McCullough, at IrvinM@whistleblower.org, with any questions.

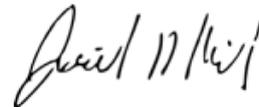
Sincerely,



Scott A. Allen, MD, FACP



Pamela McPherson, MD



Josiah "Jody" Rich, MD, MPH

Cc: Katherine Culliton-González, Officer, DHS CRCL

²⁰ Farida Jhabvala Romero, "ICE Misusing Solitary Confinement for COVID-19 Quarantine, Detainees Say," *KQED* (Oct. 6, 2020), <https://www.kqed.org/news/11841120/ice-misusing-solitary-confinement-for-covid-19-quarantine-detainees-say>; Allen S. Keller and Benjamin D. Wagner, "COVID-19 and immigration detention in the USA: time to act," *The Lancet* 5, no. 1 (Mar. 31, 2020): e245-246, [https://doi.org/10.1016/S2468-2667\(20\)30081-5](https://doi.org/10.1016/S2468-2667(20)30081-5)

²¹ Luke Johnson, et al, "Scoping review of mental health in prisons through the COVID-19 pandemic," *BMJ Open* 2021;11:e046547. doi: 10.1136/bmjopen-2020-046547, <https://bmjopen.bmj.com/content/11/5/e046547> ("Of 647 articles found, 83 were eligible for inclusion, the majority (58%) of which were opinion pieces. The articles focused on the challenges to prisoner mental health. Fear of COVID-19, the impact of isolation, discontinuation of prison visits and reduced mental health services were all likely to have an adverse effect on the mental well-being of imprisoned people. The limited research and poor quality of articles included mean that the findings are not conclusive. However, they suggest a significant adverse impact on the mental health and well-being of those who live and work in prisons.")

²² National Commission on Correctional Health Care, "Solitary Confinement (Isolation)," *NCCHC* (last visited June 24, 2021), <https://www.ncchc.org/solitary-confinement>

²³ See Fn. 11, *supra*.