



GOVERNMENT
ACCOUNTABILITY
PROJECT

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October 19, 2021

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

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

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

The Honorable Richard Durbin, Chairman
The Honorable Charles Grassley, Ranking
Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

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

The Honorable Patty Murray, Chairman
The Honorable Richard Burr, Ranking Member
Senate Committee on Health, Education, Labor
& Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Robert Scott, Chairman
The Honorable Virginia Foxx, Ranking
Member
House Education & Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

Re: Weaknesses in OSHA Investigation and Enforcement at Irwin County Detention Center Demonstrate Ongoing Risks to Workers, Immigrants and the Public from COVID-19 in ICE Detention

Dear Committee Chairpersons and Ranking Members:

We are writing to make you aware of the concerning results of an Occupational Safety and Health Administration (OSHA) inspection conducted at the Irwin County Detention Center (ICDC), a private prison run by LaSalle Corrections ("LaSalle Corrections" or "LaSalle ICDC") in Ocilla, Georgia, where two workers have died since the beginning of the COVID-19 pandemic. The investigation was prompted by a complaint we filed on behalf of a confidential

whistleblower in December 2020 about workplace practices that failed to protect against the spread of COVID-19. ICDC previously operated primarily as an Immigration and Customs Enforcement (ICE) immigration detention facility until early September, when ICE severed its contract with ICDC.

OSHA has taken some steps in recent weeks to enforce health and safety in the workplace. On September 14, 2021, OSHA issued 24 citations against Foundation Food Group, a poultry processing facility in Gainesville, Georgia staffed primarily by immigrants, after six workers died, and many more fell ill, due to toxic chemical leaks.¹

While OSHA's intervention in this case is encouraging, OSHA has been far less robust in enforcing failures to protect workers from COVID-19 exposures.² As the coronavirus continues to rage in communities where ICE detention facilities, which are well-documented sources of spread, are located, OSHA's weak investigation and enforcement at ICDC described herein highlights the need for stronger mechanisms to protect not only workers but immigrants and the public from COVID-19, a virus that does not distinguish between the status of those within or near congregate settings.

Further, the OSHA findings at ICDC, as well as the process by which it conducted its investigation, reveal ongoing weaknesses and failures of executive branch agencies, including OSHA and the Department of Homeland Security (DHS), to hold ICE contractors like LaSalle Corrections accountable for their willful failures to comply with health and safety standards.

These weaknesses and failures include:

- 1) **OSHA failed as a meaningful oversight mechanism at ICDC.** OSHA's failure to protect workers and immigrants at ICDC or ensure a transparent and fair investigation process is concerning and emphasizes the lack of meaningful oversight within the ICE detention system at large. Indeed, that this inspection was OSHA's first and only into any ICE detention facility—despite the fact that up to eleven months prior whistleblowers from other ICE detention facilities steadily warned of and publicly reported hazardous conditions and practices similar to those alleged by the confidential whistleblower—demonstrates OSHA's inability or unwillingness to exercise its own initiative to protect the health and safety of some of the most vulnerable workers in knowingly dangerous congregate settings.
- 2) **OSHA's investigative process at ICDC discouraged employees from reporting health and safety hazards and failed to deter employers from endangering**

¹ U.S. Department of Labor, Press Release, "US Department of Labor Cites Foundation Food Group, Inc. For Exposing Workers to Safety Hazards, Proposes \$154k in Penalties," September 14, 2021, <https://www.dol.gov/newsroom/releases/osha/osha20210914-0>.

² See Sen. Elizabeth Warren and Sen. Cory Booker, *Letter to Principal Deputy Asst. Secretary of Labor*, (September 22, 2020), <https://www.warren.senate.gov/imo/media/doc/Letter%20from%20Senators%20Warren,%20Booker%20to%20OSHA%2009-22-20.pdf>; Noam Scheiber, "Biden Tells OSHA to Issue New Covid-19 Guidance to Employers," New York Times (January 21, 2021, updated October 7, 2021), <https://www.nytimes.com/2021/01/21/business/economy/biden-osha-coronavirus.html>.

workers. From denying the statutory right of employee complainants to meet with investigators, to failing to issue a general duty clause violation when the facility had caused the spread of COVID-19 that resulted in two worker deaths, to issuing a modest citation for LaSalle's failure to have or implement a respiratory protection program during a pandemic spread by respiration, OSHA's conduct during this investigation illustrated how employees at ICDC, and possibly elsewhere, are being disenfranchised by the agency intended to protect them and deterred from reporting because of such weak enforcement.

- 3) **COVID in immigration detention continues to be a serious threat to workers, immigrants, and the general public's health and safety.** OSHA's inspection, while rife with shortcomings, shows that LaSalle Corrections was not equipped to manage and care for hundreds of immigrant detainees in a safe and responsible way. While the ICDC stopped holding immigrant detainees as of September 4, 2021,³ LaSalle Corrections continues to not only house prisoners at ICDC, it operates multiple other ICE facilities across the southern United States. Increased oversight in ICE detention is particularly critical as the numbers of people detained in ICE custody remains high;⁴ transfers continue apace in violation of CDC guidance; and ICE detention facilities are predominantly located in states with low vaccination rates.
- 4) **OSHA's failure to protect workers in ICE detention settings reflects systemic racism in the U.S. immigration system that causes disproportionate harm to Black, Indigenous, and other people of color (BIPOC).** Already uniquely disadvantaged, BIPOC workers have been the hardest hit by the COVID-19 pandemic, and BIPOC migrants comprise almost the entirety of the detention population. Failing to protect workers who may contract COVID-19 from or transmit COVID-19 to migrant detainees, further harms a population that is already disproportionately at risk of illness and death in a racist system with a well-documented record of abuse.

We ask that Congress investigate and address all these issues with the alacrity and seriousness they warrant.

Below we detail the background of the OSHA complaint and problems we experienced as employee representatives of an affected employee, as defined by the OSH Act of 1970 and its corresponding regulations, throughout the investigation. We then explain how the conclusions of the OSHA investigation reveal fundamental weaknesses and flaws in OSHA's investigative

³ See Emil Moffat, "Attorney: Last of Immigrants at Irwin County Detention Center Have Been Transferred," *WABE* (September 4, 2021), <https://www.wabe.org/attorney-last-of-immigrants-at-irwin-county-detention-center-have-been-transferred/>.

⁴ See TRAC Immigration, Immigration Detention Quick Facts, <https://trac.syr.edu/immigration/quickfacts/> (last visited October 13, 2021). ICE publishes statistics including information on the average daily population of non-citizens in ICE custody, the number of people in ICE custody reportedly tested for COVID-19, and the number of people who have reportedly tested positive. As of October 5, 2021, ICE indicated that the average daily population of people in ICE custody was 21,890, compared with an average daily population of 33,724 for Fiscal Year 2020. See "ICE Detainee Statistics," <https://www.ice.gov/coronavirus#detention> (last visited October 12, 2021). See also Austin Kochoer, "ICE Detention Numbers Decline, But That's Not the Whole Story," *Austin Kochoer Blog* (September 28, 2021), <https://www.austinkochoer.com/blog/2021/9/28/ice-detention-numbers-decline-but-thats-not-the-whole-story>.

process and enforcement powers. Finally, we explain why the health and safety hazards related to COVID-19 reported by the confidential whistleblower at ICDC—with similar hazards reported by other whistleblowers at different ICE facilities—are ongoing concerns that continue to endanger workers and local communities.

We are encouraged by new efforts being made to address the spread of COVID-19 through vaccinations. Recent reports indicate that the Biden administration has drastically increased access to vaccines for immigrants in ICE detention. As of August 16, 2021, an estimated 22,000 immigrants in ICE custody have had at least one vaccine dose – a 167% jump since early July.⁵ In addition, the recent announcement by the Biden administration requiring that larger employers mandate their employees, as well as all federal employees and contractors, to be vaccinated, will eventually be a significant step to combatting COVID-19 and protecting worker health and safety.⁶

These recent efforts are reassuring, but implementation of the vaccine mandate for workers is still weeks away⁷ and will not do enough in the coming weeks to mitigate failures to protect against the spread of the virulent Delta variant of COVID in ICE detention. Indeed, the DHS Office of Inspector General recently issued a report⁸ finding significant failures at several ICE detention facilities, including those operated by private contractors such as LaSalle Corrections, to manage the spread of COVID-19—failures that echo the concerns investigated by OSHA at ICDC.

Questions thus remain around unsafe practices and hazardous conditions faced by detained people and facility staff in ICDC and other ICE facilities around the country and the effectiveness of OSHA in fulfilling its mandate to investigate and enforce worker health and safety violations. These concerns warrant a system-wide investigation and response to prevent further risk of harm, both at ICDC, which continues to hold non-immigrant detainees, and other ICE-run and contractor-operated facilities around the country.

I. OSHA Complaint Against Irwin County Detention Center

A. Unsafe Conditions from COVID-19 Widely Reported Before OSHA Inspection

While ICDC may be best known for whistleblowing disclosures concerning women immigrant detainees being subjected to unnecessary, nonconsensual gynecological procedures—

⁵ See Camilo Montoya-Galvez, "ICE ramps up vaccination of immigrants in U.S. custody, but thousands have refused," *CBS News* (August 13, 2021), <https://www.cbsnews.com/news/ice-ramps-up-vaccination-of-immigrants-in-u-s-custody-but-thousands-have-refused/>

⁶ Courtney Bublé, "Executive Order Details Vaccine Mandate for Federal Contractors," *Government Executive* (September 9, 2021), <https://www.govexec.com/management/2021/09/executive-order-details-vaccine-mandate-federal-contractors/185258/>; Aishvarya Kavi, "Biden's Push: What You Need to Know," *New York Times* (September 9, 2021), <https://www.nytimes.com/2021/09/09/us/politics/biden-vaccine-plan-highlights.html?action=click&module=RelatedLinks&pgtype=Article>

⁷ Lauren Hirsch, "Companies face pressure to act on vaccine mandates even as they wait for clear rules," *New York Times* (October 7, 2021), <https://www.nytimes.com/2021/10/07/business/biden-osha-vaccine-mandate.html>.

⁸ DHS Office of Inspector General, "ICE's Management of COVID-19 in Its Detention Facilities Provides Lessons Learned for Future Pandemic Responses," (September 7, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>

disclosures that the press covered widely and that catalyzed numerous federal investigations— ICDC received less attention for whistleblowing disclosures concerning improper workplace safety and health practices at ICDC during the first months of the COVID-19 pandemic that endangered detained people, workers, and the surrounding community.⁹

The failure of ICE detention facilities to protect workers, detainees and the public from COVID-19 was widely reported in the press,¹⁰ and whistleblowers have raised the alarm since the beginning of the pandemic.¹¹ Conditions at ICDC specifically were so hazardous that some detainees began hunger strikes even before whistleblowers outlined unsafe practices in their disclosures.¹² Those practices included the continuing transfer of immigrants, some with COVID symptoms or positive tests, in and out of the facility; the failure to properly quarantine new arrivals; the failure to provide adequate personal protective equipment (PPE) or facilitate social distancing; the failure to properly sanitize the facility; and the failure to administer COVID tests or engage in accurate reporting.

Perhaps because of the intense investigative focus on the medical mistreatment of women at ICDC, the other failures to protect the health of workers and detainees during the pandemic remain insufficiently addressed. To our knowledge, the DHS OIG has not investigated any of the worker health and safety disclosures, more than a year since Government Accountability Project and Project Sout filed whistleblower complaints about ICDC in mid-September 2020, even as their investigation into medical mistreatment continues.

B. OSHA Disclosures

⁹ See José Olivares and John Washington, “A Silent Pandemic’: Nurse at ICE Facility Blows the Whistle on Coronavirus Dangers,” *The Intercept* (September 14, 2020), <https://theintercept.com/2020/09/14/ice-detention-center-nurse-whistleblower/>. For the record, Government Accountability Project serves as legal counsel for Ms. Wooten. See Letter to Congress from Government Accountability Project and Project South Re: Whistleblower Disclosures on Medical Care in ICE Detention/Irwin County Detention Center (September 17, 2020), <https://whistleblower.org/wp-content/uploads/2020/09/ICE-ICDC-Whistleblower-Disclosure-to-Congress-091720-1.pdf>.

¹⁰ See, e.g., Lisa Riordan Seville and Hannah Rappleye, “ICE keeps transferring detainees around the country, leading to COVID-19 outbreaks,” *NBC News* (May 31, 2020), <https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-around-country-leading-covid-19-outbreaks-n1212856>; Camilo Montoya-Galvez, “Powder kegs’: Calls grow for ICE to release immigrants to avoid coronavirus outbreak,” *CBS News* (March 19, 2020), <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>; Alisa Reznick, “You Can Either Be A Survivor Or Die’: COVID-19 Cases Surge In ICE Detention,” *NPR* (July 1, 2020), <https://www.npr.org/2020/07/01/871625210/you-can-either-be-a-survivor-or-die-covid-19-cases-surge-in-ice-detention>.

¹¹ 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> (warning of harm to workers, immigrant detainees and the public from the spread of COVID in ICE detention); Letter from Government Accountability Project to Chairman Thompson (July 10, 2020), <https://whistleblower.org/wp-content/uploads/2020/07/071020-letter-to-Congress-from-GovAcctProj-re-whistleblowers-ICE-Detention-COVID-FINAL-Submitted.pdf> (anonymous whistleblowers from Richwood Corrections ICE detention facility disclosing failures to comply with CDC and ICE detention guidelines related to the spread of COVID).

¹² See Seth Freed Wessler, “Fear, Illness and Death in ICE Detention: How a Protest Grew on the Inside,” *New York Times* (June 4, 2020), <https://www.nytimes.com/2020/06/04/magazine/covid-ice.html>.

On December 2, 2020, we filed a complaint with OSHA on behalf of a confidential whistleblower detailing numerous health and safety hazards for both workers and immigrant detainees, many related to failures to comply with the established safety practices to limit the spread of COVID-19. The violations of CDC guidance and OSH Act standards evidence a general duty clause violation, which are willful if “an employer has demonstrated either an intentional disregard for requirements of the [OSH] Act or a plain indifference to employee safety and health.”¹³

We include below a summary of the COVID-related workplace health and safety or general OSHA violations that the whistleblower disclosed:

1. ICE, LaSalle, and ICDC failed to administer COVID-19 testing to immigrants who reported symptoms, jeopardizing the health and safety of workers and immigrant detainees and depriving employees of a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” See 29 U.S.C. § 654. See also OSHA Field Operations Manual (“FOM”), at 4-22.
2. ICE, LaSalle, and ICDC failed to follow their own decontamination and cleaning programs and schedules, exposing employees to hazardous bodily fluids and contaminants, including, but not limited to, blood or other potentially infectious materials. See 29 CFR 1910.1030. The employers’ failures willfully deprived employees of a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm” in multiple areas of the ICDC facility. See 29 U.S.C. § 654. See also OSHA FOM, at 4-22.
3. The whistleblower was not aware of, never saw, reviewed, or was asked for their input regarding an Exposure Control Plan for blood pathogens or other infectious materials. See 29 C.F.R. 1910.1030(c) (requiring employers to “establish an Exposure Control Plan” and “solicit input from non-managerial employees responsible for direct patient care”).
4. The whistleblower was not aware of the existence of “OSHA 300 Logs,” did not know what they were, and did not know who administers and keeps them. See 29 C.F.R. 1904.35.¹⁴
5. ICE, LaSalle, and ICDC willfully failed to keep medical records of COVID-19 cases among staff and detainees who contracted COVID-19 due to exposure to the virus in the work environment, in violation of 29 C.F.R. §§ 1904.4-1904.7.
6. ICE, LaSalle, and ICDC willfully failed to post conspicuous notices informing employees of OSHA’s protections and obligations and encouraging employees to contact the employer or the nearest office of the U.S. Department of Labor for

¹³ See 29 U.S.C. § 654. See also OSHA, Field Operations Manual (“OSHA FOM”), at 4-22 (April 14, 2020), https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-00-164.pdf.

¹⁴ OSHA 300 Logs are records required to be kept by employers of work-related illnesses and injuries. 29 CFR Part 1904.

assistance and information, including specific safety and health standards in the workplace. See 29 C.F.R. § 1903.2.

7. ICE, LaSalle, and ICDC willfully failed to provide sufficient PPE to employees and immigrant detainees, thus increasing employee and immigrant detainee risk to exposure to COVID-19 and other illnesses. See 29 C.F.R. 1910.132; 29 C.F.R. 1910.1030. Because illnesses like COVID-19 are highly contagious and potentially fatal, the Employers' failures willfully deprived employees of a workplace that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm" in multiple areas of the ICDC facility. See 29 U.S.C. § 654.
8. ICE, LaSalle, and ICDC failed to properly train employees on PPE, as required by 29 C.F.R. 1910.132(f)(1).
9. ICE, LaSalle, and ICDC willfully discouraged symptomatic employees from taking sick leave, in violation of 29 C.F.R. 1904.35. The Employers further willfully discouraged symptomatic employees from reporting workplace-related illnesses by discriminating against employees who reported COVID-19 symptoms based on the employees' race and ethnicity. See 29 C.F.R. 1904.35(b)(1)(iii). Because illnesses like COVID-19 are highly contagious and potentially fatal, the Employers' failures willfully deprived employees of a workplace that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm" in multiple areas of the ICDC facility. See 29 U.S.C. § 654.

C. OSHA's Inspection and its Results

On December 4, 2020, Tavy Wade, an OSHA Compliance Safety and Health Officer with the Savannah OSHA Area Office, informed Government Accountability Project that OSHA would conduct a surprise inspection of ICDC during the week of December 7, 2020. Ms. Wade also alleged that above violations #1, #4, and #9 were not in OSHA's jurisdiction. We believe this is the first federal OSHA inspection of an ICE detention facility since the beginning of the COVID-19 pandemic.

On June 15, 2021, in a letter dated June 14, 2021, OSHA's Savannah Area Office provided Government Accountability Project with a copy of the letter from Robert W. Stocksdale, Area Director, to our client, notifying our client of the results of the inspection that it completed on June 7, 2021. While OSHA did not substantiate all of our client's disclosures (their findings purportedly "verified through employee and employer interviews and documentation obtained during our visit," concerns about which we discuss in more detail in Section II below), the allegation in the complaint about the lack of PPE gave rise to OSHA's inspection of the respiratory program, fit testing, and training requirements.

OSHA issued four citations for "serious" violations under 29 CFR 1910.134 concerning respiratory safety, grouped together because they "involved similar or related hazards that may

increase the potential for injury or illness.”¹⁵ Respiratory citations are one of the top penalties related to COVID-19 safety violations. This is the first OSHA citation against LaSalle, which also operates detention facilities in several other locations throughout the Southeast.¹⁶

OSHA cited LaSalle ICDC for a serious violation of 29 CFR 1910.123(c)(1) which requires employers to establish and maintain a written respiratory protection program that includes the provisions in 29 CFR 1910.134(c)(1)(i) - (ix) with worksite specific procedures for required respirator use. OSHA found that LaSalle ICDC did not develop a written respiratory protection program with such worksite-specific procedures for respirator use and the employer required employees to wear respirators while cleaning rooms that were previously occupied by detainees potentially infected with COVID-19. OSHA gave LaSalle ICDC until July 23, 2021, to abate the violation and proposed a \$4,973 penalty.

The additional three citations, also for serious violations with the same required abatement date, included a citation for failing to provide a medical evaluation to determine each employee’s ability to use a respirator before requiring their use for cleaning rooms previously occupied by detainees potentially infected with COVID-19; a citation for failing to provide fit tests when employees used different respirator facepieces; and a citation for failing to provide effective respirator training on the effects of improper fit, limitations, maintenance and care, medical signs and symptoms preventing effective use, and seal check of filtering facepiece respirators. OSHA did not propose separate penalties for these three particular violations.

Finally, and disturbingly, OSHA found that LaSalle ICDC did not comply with 29 CFR Part 1904, which requires employers to keep and maintain logs and summaries of work-related injuries and illnesses, as well as injury and illness incident reports (OSHA Forms 300, 300A, and 301). Despite this finding, OSHA did not issue a citation to LaSalle, but rather issued a Hazard Alert Letter to ICDC Warden David Paulk recommending steps to ensure compliance with the standard – simply descriptions of the forms and OSHA’s requirements. Mr. Stocksdales did not give any deadline for complying with the OSHA reporting requirements or mention any follow-up. The explanation we received from OSHA as to why no citation was issued is because OSHA maintains that ICDC/LaSalle maintained “equivalent forms.”

Government Accountability Project obtained the records from LaSalle ICDC, and upon review, it is clear that these forms are not in fact equivalent. For example, LaSalle ICDC’s 2019 records lack important information that would otherwise be listed on the OSHA 300 log. Specifically, the records from 2019 lack any information about the days away from work or job restrictions caused by the injuries, potentially obscuring the severity of the incidents reported. The nature of record-keeping during 2020 is also concerning; where the incidents in 2021 were recorded chronologically, the incidents in 2020 were recorded haphazardly, leading us to question whether the 2020 logs were created before or after the inspection, as well as the degree of their accuracy and completeness.

¹⁵ See Attachment 1, Citation and Notification of Penalty, U.S. Department of Labor Occupational Safety and Health Administration (June 7, 2021).

¹⁶ LaSalle Corrections, *Locations*, (last visited October 12, 2021), <https://lasallemcorrections.com/locations/>.

During a period when testing was questionable at best and accounting for illnesses from COVID was so critical to protecting worker, detainee and public health—and indeed, when at least one worker at the facility died of COVID¹⁷ prior to the inspection—the logs are more than an administrative hassle, but critical precautions to protect against the spread of the dangerous pandemic. If the only logs available at the time of the inspection were those in the format of the 2019 logs, then LaSalle should have received a citation for failing to adequately record occupational injuries, as required under 29 C.F.R. § 1904.7.

Government Accountability Project formally contested the ordered abatement date of July 23, 2021.¹⁸ On July 8, 2021, the OSHA area director informed us that LaSalle did not appeal the citations, and that LaSalle abated the citations successfully. We requested whether proof of the abatement included signed verification from individual employees who received training on the respiratory program as well as a written respiratory program, and if this documented proof of abatement was produced to OSHA, however we did not receive a response.

II. OSHA’s Inspection Results Reflect Both Site-Specific and Systemic Investigation and Enforcement Weaknesses in Protecting Worker Health and Safety from COVID-19

OSHA’s leniency toward LaSalle ICDC for confirmed serious worker health and safety regulatory violations during the COVID-19 pandemic is alarming. Also concerning, however, were the documented challenges we experienced while representing the confidential complainant through the investigation process. These investigative and enforcement weaknesses, outlined below, reveal the ongoing risk to the health and safety of workers and detainees at ICDC, as well as the public, and how OSHA’s failed oversight may have contributed to it. This experience also highlights the troubling deficiencies of the OSHA Savannah Area office, and potentially others, in their lack of knowledge of the rights of affected employees and their representatives, and how easily workers and their representatives can become disillusioned with the agency that is supposed to enforce our country’s workplace safety and health laws.

A. OSHA Investigative and Enforcement Weaknesses Related to ICDC Inspection

For many reasons, it is unsurprising that OSHA failed to issue citations for some of the confidential whistleblower’s allegations of workplace health and safety hazards. By statute, OSHA must issue citations within six months of a violation. Thus, any reported violations that occurred six months before the inspection in December 2020 would, unless ongoing or occurring in plain view, be precluded from citations even if they occurred. Indeed, investigating COVID-related violations in December 2020 is particularly challenging when LaSalle ICDC, the employer under investigation had notice of forthcoming federal investigations of the facility since September 2020 because of public, detailed whistleblower disclosures that identified various health and safety violations at that time. As detailed below, we received reports from ICDC employees that LaSalle ICDC destroyed and/or concealed evidence, and silenced and/or intimidated potential witnesses before any inspections or investigations commenced, but

¹⁷ See Project South et al, Whistleblower Complaint to Joseph Cuffari et al. (September 14, 2020) at p. 25, <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>.

¹⁸ See Attachment 2, Government Accountability Project’s Notice of Contest of the Proposed Abatement of Citations for Inspection No. 1505077 (June 28, 2021) (redacted to preserve confidentiality).

OSHA's response to these concerns of interference was only to advise workers of their anti-retaliation rights under the OSH Act. These points, taken with a plethora of issues detailed below, make OSHA's failure to substantiate the whistleblower's disclosures as troubling as it is unsurprising.

Aside from these investigation and enforcement challenges, there were other concerning problems with the investigation, such as its scope and process which resulted in findings that facially fail to protect worker health and safety at one of the most notorious sites of COVID spread in a congregate setting in the United States.

i) OSHA's Refusal to Investigate LaSalle's Refusal to Test Symptomatic Detainees

OSHA's claim that allegations that LaSalle ICDC refused to test symptomatic detainees were outside of its jurisdiction reflects an alarming hole in OSHA's understanding of what constitutes a workplace health and safety hazard in a pandemic. Infectious respiratory viruses draw no distinction between workers or detainees in a congregate, indoor setting. They are inextricably connected. Allegations that LaSalle ICDC refused to test detainees is directly relevant to worker health and safety when the workers who regularly interacted with detainees were unwittingly exposed to COVID-positive detainees. This alleged neglect is arguably willful, or certainly reckless, disregard for the health and safety of ICDC workers and detainees alike. CDC guidance for testing in correctional and detention facilities sets forth their recommendations for testing people with COVID-19 symptoms, known exposure, or recent infection, and screening testing for people without known exposure to identify asymptomatic cases.¹⁹ The General Duty Clause, Section 5(a)(1) of the OSH Act, gives OSHA jurisdiction on this type of administrative control to prevent the spread of COVID-19.²⁰

Indeed, given that many immigrants in detention facilities are also workers, the distinction between workers and detained persons during a pandemic rings that much more hollow when the ultimate goal of OSHA is to protect worker health and safety. While ICDC has just recently discontinued its practice of holding immigrant detainees, these concerns are applicable to privately owned and operated ICE facilities across the country. There have been a number of legal challenges to the labor practices of immigration detention centers toward detainee workers. For example, California OSHA cited and fined the Mira Loma detention center after a detainee was killed while working with a jackhammer.²¹ Nationwide, advocates have brought lawsuits under the Trafficking Victims Protection Act challenging the forced nature of

¹⁹ Centers for Disease Control and Prevention, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," (Updated June 9, 2021),

<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

²⁰ The general duty clause states "Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." The failure to test detainees for COVID-19 reasonably constitutes a situation that could lead to death or serious physical harm.

²¹ See Molly Hennessy-Fiske, "Paid \$1 to \$3 a day, unauthorized immigrants keep family detention centers running," *L.A. Times* (August 3, 2015), <https://www.latimes.com/nation/immigration/la-na-detention-immigration-workers-20150803-story.html>.

work in immigration detention centers.²² Finally, cases are ongoing to challenge the below-minimum wage salaries paid to immigrant detainees for their work in detention.²³ These cases raise serious questions about federal OSHA's jurisdiction and its purported limit in the context of immigration detention facilities, questions only heightened during the COVID pandemic.

ii) LaSalle's Alleged Interference with OSHA Investigation

On March 23, 2021, we submitted a letter to the OSHA Savannah area office that detailed concerns about LaSalle's interference with OSHA's investigation, and asked OSHA investigators to take all necessary steps to protect witnesses from retaliation and to ensure that LaSalle/ICDC is prohibited from any further interference with the investigation. Our concerns included:

- ICDC employees confidentially reported to us that ICDC authorities contacted employees and tried to dictate the employees' testimony in advance of their interviews with federal OSHA investigators. If true, these allegations suggest that LaSalle/ICDC used intimidation and retaliation tactics to silence employees about misconduct at the facility and criminally obstructed federal investigations.
- ICDC employees confidentially reported to us that ICDC managers allegedly instructed employees to shred potential evidence. The destruction of any records eliminates potentially incriminating evidence and jeopardizes federal investigations. Any such instruction to destroy evidence would constitute criminal obstruction of justice under 18 U.S.C. § 1505.
- ICDC employees confidentially reported to us that ICDC managers attempted to conceal evidence from OSHA investigators. Specifically, we learned and shared with OSHA that on the day of OSHA's onsite "surprise" inspection, when an ICDC manager learned that OSHA was on the premises, she immediately moved a box of over 900 N-95 masks out of hiding for OSHA investigators to see, and then immediately locked them back up again in a closet after the inspection. The manager's actions are troubling because they indicate her knowledge that the concealed and withheld masks constituted incriminating evidence as well as her intent to conceal the violation from federal investigators.

We also received information that on the date of the initial OSHA inspection, a manager told nurses not to answer OSHA inspectors' questions, per instructions from ICDC Warden David Paulk. Allegedly, Warden Paulk also told OSHA inspectors they could come into the

²² See generally Jonathon Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 34 GEORGETOWN IMMIGR. L.J. 573 (2020), <https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2020/08/ENDING-FORCED-LABOR-IN-ICE-DETENTION-CENTERS-A-NEW-APPROACH.pdf>.

²³ See *Washington v. GEO Group*, 283 F. Supp. 3d 967 (W.D. Wash. 2017); *Chen v. GEO Group*, 287 F. Supp. 3d 1158 (W.D. Wash. 2017); *Novoa v. GEO Group*, No. EDCV 17-2514 JGB (SHKx), 2018 U.S. Dist. LEXIS 117129 (C.D. Cal. June 21, 2018).

building and look around but not question any staff or detainees. To our knowledge, no nurses were interviewed that day. If true, this is deeply concerning.²⁴

We shared with OSHA investigators that the witnesses with whom we spoke asked to remain anonymous for fear of retaliation. The OSHA investigators promptly thanked us for raising the concerns and assured us that employees are protected from retaliation under Section 11(c) of the OSH Act for reporting health and safety concerns. OSHA's appreciation of the problem does not mean such interference did not occur, and to our knowledge, OSHA did not investigate whether there was either interference with the investigation or retaliation. Indeed, employees who file retaliation complaints often continue to suffer retaliation during and after filing 11(c) complaints and cannot recover any relief until after OSHA finishes fully investigating such complaints. And as whistleblowing experts whose representations span dozens of federal whistleblowing statutes, we know the OSH Act's anti-retaliation provisions are among the weakest both on paper and in practice.²⁵ Thus, mere existence of a law and process by itself is insufficient to address witness intimidation.

Federal law prohibits individuals from knowingly and willfully falsifying, concealing, or covering up material facts during an investigation. See 18 U.S. Code § 1001. Given that some evidence was likely destroyed or concealed before OSHA could evaluate it, we requested that OSHA's final report(s) address this at the outset by clarifying that investigators were unable to assess all the evidence because of the real possibility that LaSalle/ICDC did not make all evidence available to the investigators.

The final report from OSHA to the confidential whistleblower did not address any concerns about its access to all the evidence potentially relevant to its investigation.

iii) OSHA's Failure to Comply with the Rights of Affected Employees and their Representatives during the OSHA Investigation Process

²⁴ We should note that this is not the first context in which we have heard concerning reports about attempts to interfere with investigations at ICDC by management warning employees not to speak with investigators. We raised similar concerns of interference with ongoing investigations to the DHS OIG investigative and whistleblower protection units in the context of active investigations into our client Ms. Dawn Wooten's disclosures. Additionally, we received information that on September 26, 2020, during a congressional delegation visit by members of the Congressional Hispanic Caucus and the House Judiciary Committee to ICDC that Warden Paulk also allegedly instructed employees not to speak with anyone, with an ICDC manager threatening nurses with termination of their employment if they spoke with any of the members of congress. Again, if true, these troubling allegations of interference with ongoing agency and congressional investigations by gagging employees from exercising their rights to blow the whistle and/or participate in investigations warrants investigation. See Rep. Lou Correa, "Rep. Lou Correa Joins Congressional Delegation to Investigate Reports of Abuse at the ICE Irwin County Detention Center," Media Advisory (September 25, 2020), <https://correa.house.gov/news/press-releases/rep-lou-correa-joins-congressional-delegation-to-investigate-reports-of-abuse-at-the-ice-irwin-county-detention-center>; Adolfo Flores, "Women Detained by ICE Told Members of Congress They Underwent Unwanted Medical Procedures," *BuzzFeed News* (September 26, 2020), <https://www.buzzfeednews.com/article/adolfoflores/members-of-congress-ice-detainees-medical-procedures>.

²⁵ See Deborah Berkowitz and Shayla Thompson, "OSHA Must Protect COVID Whistleblowers Who File Retaliation Complaints," *National Employment Law Project* (October 2020), <https://www.nelp.org/publication/osha-failed-protect-whistleblowers-filed-covid-retaliation-complaints/>; also see Stuart Silverstein, "Watchdog Finds That Nearly 1 in 5 OSHA Whistleblower Probes Are Flawed," *FairWarning* (October 7, 2015), <https://www.fairwarning.org/2015/10/1-in-5-osha-probes-are-flawed/>.

The Occupational Safety and Health Act of 1970 (OSH Act) and its corresponding regulations confers very few rights to employees and their representatives. During our involvement with the investigation at ICDC, the Savannah OSHA Area Office exhibited its complete disregard and/or lack of knowledge about the rights of our confidential whistleblowing client and our organization as an employee representative.

On December 21, 2020, we requested, via email, to exercise our rights as the employee representative by participating in the closing conference, receiving parallel notice of OSHA's preliminary determination after investigation, receiving notice if employer contests the decision, and to electing party status before the Review Commission if the employer contests a citation.²⁶ On December 23, 2020, Ms. Margo Westmoreland, Area Director of OSHA's Savannah Areas Office, responded via email that the initial closing conference was held with members of management at the conclusion of the site visit and a second conference would be held at some point in the future. On December 24, 2020, we replied to Ms. Westmoreland's email and inquired why no employee or employee representative was present during the closing conference, given that the Field Operations Manual (FOM) dictates that OSHA inspectors must "conduct a closing conference with the employer and the employee representatives, jointly or separately, as circumstances dictate."²⁷ We received no reply from Ms. Westmoreland.

On January 15, 2021, OSHA Compliance Safety and Health Officer Chad Martin spoke with us and agreed to share information provided to the employer during the closing conference that took place in December 2020. On January 19 and 26, 2021, we wrote again asking for information provided to the employer. Having still received no response, on February 22, 2021, we wrote again asking for a response. On February 23, 2021, we spoke with Mr. Martin via phone and Mr. Martin, misapplying the rules by citing an inapplicable regulation (29 CFR 1904.35(b)(2)(i)), improperly denied our request to take part in the ICDC initial and second closing conference because he understood "employee representative" to indicate "union representative," and because there is no union at LaSalle and thus no union representative for the confidential whistleblower, no employees would be included in any closing conferences regarding the investigations into the whistleblower's disclosures. Mr. Martin also improperly represented to us that we would have to request a copy of any citation at the conclusion of the investigation through a Freedom of Information Act request, rather than receive it by right as the complainant.

On May 27, 2021, Government Accountability Project wrote a letter to OSHA about Mr. Martin's misapplication of the regulations and objecting to his decision. The correct citation, 29 CFR 1903.20, allows an employee representative to participate in an informal conference to discuss issues raised during the inspection, citation, notice of proposed penalty, or notice of intention to contest. 29 CFR 2200.1(h) defines "representative" as "any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding." Similarly, Chapter 5 (XI)(B)(II) of the Field Operations Manual, which pertains to obtaining a copy of the OSHA citation, does not require a request from an "authorized employee representative" but rather "[c]itations shall be mailed to employee representatives after the

²⁶ 29 CFR § 1903.14; FOM Chap. 3, Sec. VIII(B)(6).

²⁷ See FOM, Chap. 3 Sec. VIII(A).

certified mail receipt card is received by the Area Office. Citations shall also be mailed to any employee upon request and without the need to make a written request under the Freedom of Information Act (FOIA)." Also on May 27, 2021, we spoke with Mr. Jerred Stevens, the Acting Area Director, who corrected Ms. Martin's mistaken belief and reaffirmed the correct applicable rules that allow the whistleblower and their counsel to participate in conferences. On June 8, 2021, we emailed Mr. Stevens and Mr. Martin requesting a copy of the files and records from the initial closing conference that the whistleblower's counsel was neither informed of nor invited to participate in. Also on June 8, 2021, Mr. Stevens denied Government Accountability Project's request for information that was earlier promised by Mr. Martin. Government Accountability Project did, however, receive a copy of the citations issued to ICDC in accordance with our rights as employee representative under the pertinent regulations.

Had we been afforded our legal right to participate in the closing conference, we would have been able to raise concerns about the scope and process of the investigation and to request actual efforts to ascertain whether employees were gagged or chilled from speaking with investigators and ensure that interviews took place in safe spaces off-site. This entire interaction with OSHA calls into question its competency to complete investigations in a manner that follows the rules and respects the rights of employees who exercise courage to report health and safety dangers, and as such calls into question the integrity of the investigation itself. Our client is fortunate enough to have legal counsel, and yet the OSHA field office resisted cooperating with counsel while conducting the investigation because their staff misunderstood the rules and regulations and possibly because they had something to hide. Employee whistleblowers who file OSHA complaints without the benefit of counsel would likely fare even worse in their effort to participate fully in investigations in accordance with their legal rights. Workers are in the best, and sometimes the only, position to witness health and safety hazards, and if the process that allows them to report concerns is so flawed, OSHA's ability to effectively protect the health and safety of workers will be too.

B. OSHA's Findings Reveal Fundamental Weaknesses and Flaws in OSHA's Investigative Process and Enforcement Powers During the COVID-19 Pandemic, Endangering Worker as well as Immigrant and Public Health and Safety

In addition to the flaws in OSHA's investigation into our client's reports of health and safety hazards at ICDC outline above, it is important to note the context of COVID at ICDC affecting workers during the period from March 2020 to the current day. During the time of our client's OSHA's disclosures about workplace health and safety dangers and the lack of a program to protect staff at ICDC, Marian Cole, the Health Services Administrator at ICDC, contracted COVID-19 and died.²⁸ LaSalle management claimed Ms. Cole contracted the virus at a family event, but from OSHA's citations alone it is clear that LaSalle did not adequately protect nurses and other workers at ICDC who were exposed to COVID-19 infected detainees. On June 11, 2021, Lillie Florence Smith, another LaSalle ICDC officer, died from COVID-19.²⁹ Before contracting COVID-19, Smith was placed in a dorm with 65 positive immigrants out of

²⁸ See Project South et al, 2020, Whistleblower Complaint to Joseph Cuffari et al. at p. 25, <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>

²⁹ See Obituary for Lily Florence Smith, Southview Mortuary, <https://www.articobits.com/obituaries/southview-mortuary-inc/lily-florence-smith-obituary> (last visited July 12, 2021).

180 recently received without the proper PPE or knowledge of their positive status. After this incident, several officers called out sick with COVID-19. These examples about threats to workers do not account for the parallel reports of failures to protect immigrants present with these workers at ICDC.

It is perplexing why OSHA decided not to use its full enforcement authority against LaSalle when it was a matter of life and death for LaSalle ICDC employees. Mandating that compliance with respiratory safety be abated more than six weeks after issuing citations for violations that clearly have been ongoing since the beginning of the pandemic demonstrates the weakness of OSHA as a source of protection of worker health, and in the case of COVID, detainee and public health as well. The lack of respiratory protection has been a primary reason for the high COVID infection rates at ICDC.³⁰

Although OSHA on June 27, 2021 issued a new Emergency Temporary Standard (ETS) for workers in health care settings, these standards do not apply to *all* workers in correctional and detention facilities—only those providing health care and there are limitations and exceptions that further dilute that coverage.³¹ And while the Biden administration’s September 9, 2021 executive order mandating vaccination of federal employees and contractors will eventually offer protection to workers in detention settings, full compliance will not be in effect until December 8, 2021.³² These standards of course were not in effect at the time of either OSHA’s inspection of or even the issuance of its findings against LaSalle ICDC, or in other words, as workers were at their most vulnerable.

The myopic jurisdictional limitations that carve out treatment of immigrant detainees from the scope of OSHA’s investigation authority puts workers in immigration detention centers – and jails and prisons across the country – at great risk given the reality that detainees, who are subject to the same health and safety risks from COVID, come into regular contact with detention workers who subsequently come into regular contact with their families and the community at large. Until there is wider-spread delivery and acceptance of the vaccine by workers and immigrants in detention settings, this limitation will continue to be a source of risk and spread of COVID-19 to workers, immigrants in detention, and the local community alike.

Members of Congress already noted that thus far OSHA’s abysmal track record enforcing workplace health and safety violations during the COVID-19 pandemic. On September 22, 2020, Senators Warren and Booker confronted Loren Sweatt, Principal Deputy Assistant Secretary of Labor, about OSHA’s delayed and feckless response to dozens of outbreaks of COVID-19 in

³⁰ See Katherine Peeler, MD *et al*, “Praying for Hand Soap and Masks: Health and Human Rights Violations in U.S. Immigration Detention during the COVID-19 Pandemic,” *Physicians for Human Rights* (January 12, 2021), <https://phr.org/our-work/resources/praying-for-hand-soap-and-masks/>

³¹ Occupational Safety and Health Administration, COVID-19 Healthcare ETS, *U.S. Department of Labor* <https://www.osha.gov/coronavirus/ets> (last visited October 14, 2021); also see House Education and Labor Committee, “Examining the Policies and Priorities of the U.S. Department of Labor,” (June 9, 2021), <https://edlabor.house.gov/hearings/06/02/2021/examining-the-policies-and-priorities-of-the-us-department-of-labor-1>

³² Safer Federal Workforce Task Force, “COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors,” (September 24, 2021), https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf.

hundreds of meatpacking facilities across the country.³³ In that instance, and in stark contrast with OSHA's recent issuance of 24 citations against Foundation Food Group following chemical leaks in a Georgia poultry plant, OSHA applied the smallest possible fine to such egregious violations, thus allowing employers to escape meaningful accountability. Both President Biden and members of Congress asked the Department of Labor to issue an ETS to protect workers during COVID-19. When finally issued in June 2021, the new standard failed to adequately address the conditions at meatpacking facilities and immigration detention centers.

We also cannot overlook the racial implications of OSHA's inaction during the pandemic and subsequent weak ETS. The ETS does nothing to improve the weak, existing anti-retaliation worker protections that allow employers to easily fire employees without meaningful consequences. The balance of power, the short statute of limitations for bringing a retaliation claim, and the burden of proof for OSH Act retaliation claims, all remain too heavy in the employer's favor. So, while people of color (including Black and Latinx workers and detainees alike) are more at-risk of death or severe medical problems from COVID-19,³⁴ they are also more likely to experience retaliation for reporting the unsafe practices that put their lives in danger. The Department of Labor (DOL) has done nothing that would change or stop this fatal trap.

A June 10, 2020 study by the National Employment Law Project found that Black workers are twice as likely as white workers to report being punished or fired for raising concerns about COVID-19 spreading in the workplace. Irene Trung, senior researcher and policy analyst with NELP and lead author of the study, said in a press release of the study: "Too little attention has been paid to the connection between workplace repression and virus transmission. For Black workers, this problem is worsened by our country's long history of systemic racism in the workplace and in the labor market—making it particularly difficult to speak up about COVID-related concerns."³⁵ Ms. Laura Padin, the study's co-author, said that the study shows that "[the] virus transmission in the workplace may be exacerbated by employer repression and that the disproportionate impact of COVID-19 on Black communities may be related to greater exposure of Black workers to repressive workplace environments." *Id.*

OSHA's poor track record is again apparent through its investigation and findings at ICDC, where the two workers who likely died of COVID were Black.³⁶ Its refusal to even investigate two of the most significant allegations in the complaint related to the endangerment of workers from COVID—the refusal to test symptomatic immigrant detainees with whom ICDC

³³ See Sen. Elizabeth Warren and Sen. Cory Booker, *Letter to Principal Deputy Asst. Secretary of Labor*, (September 22, 2020), <https://www.warren.senate.gov/imo/media/doc/Letter%20from%20Senators%20Warren,%20Booker%20to%20OSHA%209-22-20.pdf>

³⁴ See Center for Disease Control and Prevention, "Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity," (updated June 17, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>

³⁵ National Employment Law Project, *Black Workers See Higher Rates of Employer Retaliation for Raising Covid Safety Concerns* [Press Release] (June 10, 2020), <https://www.nelp.org/news-releases/black-workers-see-higher-rates-employer-retaliation-raising-covid-workplace-safety-concerns/>

³⁶ See fn. 26, *supra*, and Obituary for Marian Morrow Cole, Frank and Solomon Nixon Funeral Home (last visited July 12, 2021) <https://www.articobits.com/obituaries/frank-and-solomon-nixon-funeral-home/marian-morrow-cole-obituary> (former Health Services Administrator at ICDC, passed May 5, 2020).

staff are in close contact, and discouraging symptomatic employees from taking sick leave or reporting workplace-related illnesses by discriminating against workers of color—gives us little confidence in the integrity of the OSHA investigation, its conclusions, and ultimately, its ability to fulfill its mission of protecting workers.

Indeed, OSHA’s weak findings disincentivize reporting and wholly fail to deter LaSalle’s noncompliance with necessary health and safety protections. The investigative and enforcement weaknesses themselves put workers, detainees, and the public at even greater risk of harm from unsafe practices at ICDC and other similar facilities.

C. Health and Safety Hazards Related to COVID-19 in ICE Detention at ICDC and System-Wide Continue to Endanger Workers, Immigrant Detainees and the Public, Unabated by DHS

ICE detention facilities have been significant spreaders of COVID-19, infecting workers, detainees and the public, yet they have enjoyed some of the weakest federal response to date despite the fact that the boundary between the safety of workers, detainees and the local community is non-existent.³⁷ Despite the long and steady history of whistleblower disclosures about health and safety hazards at immigration detention facilities during the pandemic, neither the federal agencies responsible nor their contractors have corrected the practices responsible for spreading COVID-19.³⁸

OSHA’s investigation of ICDC is a glaring example of this problem. LaSalle ICDC’s contract with ICE was severed in September 2021 and all immigrant detainees were transferred to other ICE facilities; however, the public and safety concerns related to COVID-19 continue unabated for the non-immigrant detainees at ICDC and indeed at other ICE facilities across the country. It is also significant that OSHA’s first and single investigation into any ICE detention facility only began in December 2020 when up to eleven months prior whistleblowers from DHS other ICE detention facilities steadily warned of and publicly reported hazardous conditions and practices similar to those alleged by the confidential whistleblower. Although whistleblowers may not have made disclosures directly to OSHA, sufficient information was available to elicit workplace inspections at ICE detention centers across the nation.

In February and March 2020, Drs. Scott Allen and Josiah Rich, medical subject matter experts for DHS’s Office for Civil Rights and Civil Liberties (CRCL), warned DHS and

³⁷ 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://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>. Dr. Allen in his Senate testimony explained: “Jails, prisons, and detention facilities are not islands—in fact, they are more like bus terminals with people coming and going. New arrestees and detainees arrive every day, in fits and spurts, sometimes arriving in large groups. Immigrants are transferred regularly throughout the detention system, with staff accompanying them as escorts. They are released without warning at court and immigrants are dropped at bus stations and airports. Officers and staff come and go, three shifts a day. And the virus can easily move back and forth by means of the asymptomatic ‘silent spreaders’ who carry the virus but do not have symptoms.”

³⁸ Felipe De La Hoz, “Recent Covid-19 Spike in Immigration Detention Was a Problem of ICE’s Own Making,” *The Intercept* (June 20, 2021), <https://theintercept.com/2021/06/20/covid-asylum-detention-ice/>; Isabelle Niu and Emily Rhyne, “4 Takeaways From Our Investigation Into ICE’s Mishandling of Covid-19,” *New York Times* (April 25, 2021), <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>

Congress about the risk of harm to workers, immigrants and the public from the spread of COVID-19 in ICE detention, and recommended significantly reducing populations in detention, implementing regular screening and testing, ensuring the availability of PPE, limiting transfers in and out of detention facilities, and vaccinating workers and detainees when available.³⁹ On June 2, 2020, Dr. Allen further noted, in his testimony to the Senate Judiciary Committee, that with ICE's record of providing inadequate medical care to detainees and failing to meet minimum standards of care, the risk of harm was that much higher.⁴⁰

Later that same month, whistleblower officers at the Richwood Corrections Center, an ICE detention facility in Louisiana also run by LaSalle, filed complaints with the DHS Office of Inspector General and Congress detailing shocking and willful workplace hazards and failures to comply with CDC guidelines related to the spread of COVID-19 including intaking ICE detainees infected with COVID-19 without CDC-required health and safety equipment or protocols in place; mixing COVID-19 exposed detainees with healthy detainees and staff during transport on a regular basis; concealing information on COVID-19 infections at Richwood, including the refusal to acknowledge the death of two employees; requiring employees potentially infected with COVID-19 to work while waiting for test results; requiring employees who were sick, elderly, had pre-existing conditions, or unwilling to risk COVID-19 exposure to use their personal leave or go without pay; neglecting or having inadequate safety training and testing, including not testing detainees after releasing them from quarantine; banning the use of protective equipment at Richwood for several weeks after the release of CDC guidelines and after knowingly accepting COVID-19 patients; and failing to sanitize dorms or common areas with mandated frequency.⁴¹

The DHS Office of the Inspector General (OIG) released a report⁴² on September 7, 2021 regarding ICE's management of COVID-19 in ICE facilities. The OIG found that ICE failed to properly manage the health and safety of individuals in its custody in a number of ways including: lack of face masks and failure to ensure physical distancing; failure to consistently manage sick calls and communicate with immigrant detainees regarding their COVID-19 status; insufficient testing of both facility staff and immigrant detainees; and lack of effective oversight at the headquarters level. Notably, the LaSalle-operated Richwood facility was one of the detention sites investigated by the OIG found to be most deficient in following requirements to protect against the spread of COVID-19.

At the LaSalle-run ICDC, despite the widespread reporting about the spread of COVID in ICE detention, the warnings of DHS's own detention health experts and whistleblowers at its

³⁹ 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>

⁴⁰ See fn. 33, *supra*.

⁴¹ Letter from Government Accountability Project to Chairman Thompson et al, "Whistleblower Disclosures on COVID-19 -- Private Contractors Mismanaging ICE Detention Facilities Are Endangering Public Health and Safety," (July 10, 2020), <https://whistleblower.org/wp-content/uploads/2020/07/071020-letter-to-Congress-from-GovAcctProj-re-whistleblowers-ICE-Detention-COVID-FINAL-Submitted.pdf>

⁴² See DHS Office of Inspector General, "ICE's Management of COVID-19 in its Facilities Provides Lessons Learned for Future Pandemic Responses," (September 7, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>

Richwood facility about dangerous failures to protect against COVID, Nurse Dawn Wooten's disclosures about similarly dangerous practices at ICDC in September 2020,⁴³ and the OSHA inspection in December 2020, COVID continued to rage through ICDC. The press reported an ongoing outbreak of COVID at ICDC this summer, with cases rising at ICDC and other facilities in Georgia.⁴⁴ Until very recently, when ICE ended its contract with LaSalle at ICDC, advocates reported that immigrant detainees were continually being transferred into the facility⁴⁵ in violation of CDC guidelines,⁴⁶ putting not only workers and migrants at ICDC, but the local Irwin County community (which notably is only 46% fully vaccinated),⁴⁷ at ongoing risk of illness and death.

The failures of private contractors like LaSalle Corrections running ICE detention centers across the country to implement adequate protections to prevent the spread of COVID-19 continue apace.⁴⁸ Despite recommendations by government experts to limit congregate settings to contain the spread of COVID-19, populations of immigrants in detention decreased primarily through litigation seeking release of medically vulnerable detainees rather than government action. Now, populations are increasing again.⁴⁹ Transfers and deportation of detainees continued unabated despite admonishment by the CDC.⁵⁰ ICE contractors do not publicly report the number of staff who tested positive or died from COVID despite the importance of such data to local public health officials and the national pandemic response.⁵¹ The problematic conditions faced by staff and immigrant detainees at ICDC are emblematic of the conditions found across

⁴³ Government Accountability Project and Project South, "Whistleblower's Disclosures on Medical Care in ICE Detention at Irwin County Detention Center: Private Contractors' Mismanagement is Endangering Immigrant, Worker and Public Health and Safety," (September 17, 2020), <https://whistleblower.org/wp-content/uploads/2020/09/ICE-ICDC-Whistleblower-Disclosure-to-Congress-091720-1.pdf>.

⁴⁴ Roxanne Scott, "As ICE Maintains Safety is a Priority During Pandemic, Records Show Multiple Outbreaks at Ga. Facilities," *WABE* (July 1, 2021), <https://www.wabe.org/as-ice-maintains-safety-is-a-priority-during-covid-records-show-multiple-outbreaks-at-georgia-facilities/>; Aja Arnold, "BREAKING: COVID-19 outbreaks in three housing units in Irwin County Detention Center," *The Mainline* (February 13, 2021), <https://www.mainlinezine.com/breaking-covid-19-outbreaks-in-three-housing-units-in-irwin-county-detention-center/>; Andy Miller, "Stewart County Becomes COVID-19 Hot Spot As Cases Rise at Detention Center," *Georgia Public Broadcasting* (June 22, 2021), <https://www.gpb.org/news/2021/06/22/stewart-county-becomes-covid-19-hot-spot-cases-rise-at-detention-center>.

⁴⁵ Andy Miller, "Stewart County Becomes COVID-19 Hot Spot As Cases Rise at Detention Center," *Georgia Public Broadcasting* (June 22, 2021), <https://www.gpb.org/news/2021/06/22/stewart-county-becomes-covid-19-hot-spot-cases-rise-at-detention-center>.

⁴⁶ Centers for Disease Control and Prevention, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," (Updated June 9, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

⁴⁷ Georgia Department of Public Health Vaccine Distribution Dashboard (last visited October 8, 2021), <https://experience.arcgis.com/experience/3d8eea39f5c1443db1743a4cb8948a9c>

⁴⁸ DHS Office of Inspector General, "ICE's Management of COVID-19 in Its Detention Facilities Provides Lessons Learned for Future Pandemic Responses," (September 7, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>.

⁴⁹ Maura Turcotte, "Virus cases are surging at crowded immigration detention centers in the U.S.," *New York Times* (July 6, 2021, last updated September 6, 2021), <https://www.nytimes.com/2021/07/06/us/covid-immigration-detention.html>

⁵⁰ See fn. 46, supra.

⁵¹ Isabelle Niu and Emily Rhyne, "4 Takeaways From Our Investigation Into ICE's Mishandling of Covid-19," *New York Times* (April 25, 2021), <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>

the immigration detention system that pose ongoing health and safety risks to workers, detainees and the public at large.⁵²

III. Conclusion

On July 13, 2020 LaSalle leadership testified to Congress before the House Homeland Security Committee Border Security Subcommittee hearing,⁵³ as well as during litigation, that they were complying with *all* protocols of care. As weak as OSHA's findings are, their citations prove that LaSalle Corrections misrepresented their compliance to Congress. Indeed, more than an entire year later, not only has there been insufficient oversight into the management of COVID-19 in ICE detention centers, but the situation has in many cases become much worse. Whereas immigrant detainees are no longer held at ICDC, those immigrant detainees were simply transferred to other ICE facilities with equally bad, if not worse, track records in terms of protecting immigrant detainees and workers from health and safety hazards related to COVID-19.

We are hopeful that President Biden's announced vaccine mandate for federal employees and contractors, along with the increase in vaccine availability to immigrants in ICE detention, will eventually mitigate risk to workers, immigrants and the public caused by ICE and its contractors' gross mismanagement of COVID-19 in immigrant detention. Without Congressional intervention, however, there is reason to believe that OSHA will continue to deprioritize oversight of immigration detention centers that are by now infamous for spreading COVID-19, will continue to be obstructed by private contractors like LaSalle during their inspections when they do occur, and will continue to take liberties by weakly enforcing the violations they do find, particularly when it comes to COVID-19.⁵⁴

Congressional inquiry would also be helpful to address concerns about the competency of the OSHA's Savannah Area Office in their application of the rules and compliance with protocols during the ICDC investigation and their dealings with the confidential ICDC whistleblower's counsel throughout the process.

Concurrently, the hazards reported by whistleblowers persist today, only now many of the whistleblowers are no longer in a position of employment to continue giving information to investigative agencies and to Congress. That whistleblowers risked their lives, and the lives of their families, by working in unsafe conditions, and then their livelihoods for reporting them,

⁵² See fns. 41 and 48, supra; Felipe De La Hoz, "Recent Covid-19 Spike in Immigration Detention Was a Problem of ICE's Own Making," *The Intercept* (June 20, 2021), <https://theintercept.com/2021/06/20/covid-asylum-detention-ice/>; The Editorial Board, "Opinion: ICE is the superspreader agency," *Washington Post* (May 2, 2021), available at https://www.washingtonpost.com/opinions/ice-is-the-superspreader-agency/2021/05/01/eb079944-a9f2-11eb-8c1a-56f0cb4ff3b5_story.html

⁵³ Rodney Cooper, Executive Director LaSalle Corrections, "Hearing on Oversight of ICE Detention Facilities: Examining ICE Contractors' Response to COVID-19," *U.S. House of Representatives Committee on Homeland Security* (July 13, 2020), available at <https://homeland.house.gov/activities/hearings/oversight-of-ice-detention-facilities-examining-ice-contractors-response-to-covid-19>.

⁵⁴ OSHA COVID Response Summary, "Inspections with COVID-related Citations," *Dept. of Labor* (last visited October 14, 2021), <https://www.osha.gov/enforcement/covid-19-data/inspections-covid-related-citations> (listing 655 inspections with violations with total initial penalties of \$4,034,288, or an average of approximately \$6,000 in fines per establishment).

effectively chills other employees from coming forward with new information about conditions in ICE detention. The failures by DHS and OSHA to protect workers and detainees at ICDC and other facilities across the country or to address the dangerous practices they disclosed demand congressional intervention to ensure that workers and the detainees entrusted to the facility's care do not continue to be exposed to hazardous practices and conditions that put their health and safety at risk.

In sum, we urge congress to:

- Investigate weaknesses in OSHA's inspection and enforcement processes generally, and at the Savannah Area Office specifically;
- Enact legislation and encourage federal agencies to enact regulations that provide better anti-retaliation protection for workers who report health and safety violations, including undocumented workers who are not entitled to significant forms of relief including back pay, front pay, and reinstatement and who bear the uniquely chilling risk of deportation in retaliation for reporting unsafe work conditions;
- Require that OSHA offices generally, and the Savannah Area Office specifically, undergo a training on the rights of employees and employee representatives, regardless of whether there is a bargaining unit within a workplace;
- Investigate ongoing systemic failures within the ICE detention system that caused, contributed to, or exacerbated harm to workers, detainees and the public from COVID-19;
- Require ICE and its contractors to collect and report data about COVID-19 cases, preventative measures, vaccine distribution, and reports by workers and detainees of violations within all ICE facilities;
- Incentivize vaccination of all ICE employees and contractors pending the full implementation of the vaccine mandate;
- Distribute vaccine and incentivize vaccination of detainees in detention settings and provide information in multiple languages about the benefits of the COVID-19 vaccines.
- Hold ICE and its contractors accountable for promoting rather than preventing the spread of COVID-19 within and beyond ICDC and other ICE detention facilities;
- Hold LaSalle responsible for concealing information about employees who died of COVID-19 and not giving truthful testimony to Congress about their compliance with health and safety regulations;
- Strengthen existing mechanisms for enforcement and accountability such as providing financial resources for hiring investigators and training staff at OSHA and OIGs so they can quickly and adequately protect front line workers, vulnerable detainees, and the public from future harm.

We appreciate the oversight of your offices and committees on these issues and we hope this information supports your urgent efforts to protect workers, detainees, and the public from imminent dangers posed by the spread of COVID-19 and its highly contagious variants.

For more information contact Samantha Feinstein at samanthaf@whistleblower.org, or Dana Gold at danag@whistleblower.org.

Sincerely,

/s/

GOVERNMENT ACCOUNTABILITY PROJECT

Samantha Feinstein, Staff Attorney

Dana Gold, Senior Counsel

ATTACHMENT 1

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1505077
Inspection Date(s): 12/08/2020 - 12/10/2020
Issuance Date: 06/07/2021



Citation and Notification of Penalty

Company Name: LaSalle Southeast, LLC
Inspection Site: 132 Cotton Drive, Ocilla, GA 31774

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 1 a Type of Violation: **Serious**

29 CFR 1910.134(c)(1): A written respiratory protection program that included the provisions in 29 CFR 1910.134(c)(1)(i) - (ix) with worksite specific procedures was not established and implemented for required respirator use:

a) Irwin County Detention Center located at 132 Cotton Drive, Ocilla, Georgia 31774

On or about December 8, 2020, the employer did not develop and implement a written respiratory protection program with worksite-specific procedures for respirator use that included all provisions in 29 CFR 1910.134(c)(1)(i) - (ix). The employer required employees to wear respirators while cleaning rooms that were previously occupied by inmates potentially infected with COVID-19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

July 23, 2021
\$4,973.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1505077
Inspection Date(s): 12/08/2020 - 12/10/2020
Issuance Date: 06/07/2021



Citation and Notification of Penalty

Company Name: LaSalle Southeast, LLC
Inspection Site: 132 Cotton Drive, Ocilla, GA 31774

Citation 1 Item 1 b Type of Violation: **Serious**

29 CFR 1910.134(e)(1): The employer did not provide a medical evaluation to determine the employee's ability to use a respirator, before the employee was fit tested or required to use the respirator in the workplace:

a) Irwin County Detention Center located at 132 Cotton Drive, Ocilla, Georgia 31774

On or about December 8, 2020, the employer did not provide a medical evaluation to determine each employee's ability to use a respirator before requiring the use. The employer required employees to wear respirators while cleaning rooms that were previously occupied by inmates potentially infected with COVID-19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 23, 2021

Proposed Penalty:

\$0.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1505077
Inspection Date(s): 12/08/2020 - 12/10/2020
Issuance Date: 06/07/2021



Citation and Notification of Penalty

Company Name: LaSalle Southeast, LLC
Inspection Site: 132 Cotton Drive, Ocilla, GA 31774

Citation 1 Item 1 c Type of Violation: **Serious**

29 CFR 1910.134(f)(2): Employee(s) using tight-fitting facepiece respirators were not fit tested whenever a different respirator facepiece (size, style, model or make) was used:

a) Irwin County Detention Center located at 132 Cotton Drive, Ocilla, Georgia 31774

On or about December 8, 2020, the employer did not provide a fit test to all employees required to wear respirators. The employer required employees to wear respirators while cleaning rooms that were previously occupied by inmates potentially infected with COVID-19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 23, 2021

Proposed Penalty:

\$0.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: LaSalle Southeast, LLC
Inspection Site: 132 Cotton Drive, Ocilla, GA 31774

Citation 1 Item 1 d Type of Violation: **Serious**

29 CFR 1910.134(k)(1): The employer did not provide effective respirator training that covered the required elements in 1910.134(k)(1)(i)-(vii):

a) Irwin County Detention Center located at 132 Cotton Drive, Ocilla, Georgia 31774

On or about December 8, 2020, the employer did not provide employees with effective training on the effects of improper fit, limitations, maintenance and care, medical signs and symptoms preventing effective use, and seal check of filtering facepiece respirators. The employer required employees to wear respirators while cleaning rooms that were previously occupied by inmates potentially infected with COVID-19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

July 23, 2021
\$0.00

A handwritten signature in blue ink, appearing to read "Robert W. Stocksdale".

Robert W Stocksdale
Area Director

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



June 7, 2021

LaSalle Southeast, LLC
Attn: David Paulk
132 Cotton Drive
Ocilla, Georgia, 31774

Dear Mr. Paulk:

An inspection of your workplace at the Irwin County Detention Center located at 132 Cotton Drive, Ocilla, Georgia, 31774, on December 8, 2020, disclosed the following hazard:

The Log of Work-Related Injuries and Illnesses and the Summary of Work-Related Injuries and Illnesses were not maintained prior to the inspection.

OSHA will not issue a citation to LaSalle Southeast, LLC at this time; however, you are required to comply with 29 CFR Part 1904. Based on OSHA regulations, which are listed at the end of this letter, it is recommended that you take the following steps to ensure compliance with the standard:

The OSHA injury and illness recordkeeping forms are:

- a. the Log of Work-Related Injuries and Illnesses (OSHA Form 300),
 - b. the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A), and
 - c. the Injury and Illness Incident Report (OSHA Form 301).
1. Employers must fill out the Log and the Incident Report only if a recordable work-related injury or illness has occurred.
 2. Employers must fill out and post the Summary annually, even if no recordable work-related injuries or illnesses occurred during the year.

Utilize OSHA guidance provided in the Recording and Reporting Occupational Injuries and Illness Standard referenced in 29 CFR 1904 to ensure accurate recording of injuries and illnesses, www.osha.gov/laws-regs/regulations/standardnumber/1904/

We appreciate your attention to these areas of concern. If you have any questions, please feel free to call me at 912-652-4393.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Stocksdale", written over a horizontal line.

Robert W. Stocksdale
Area Director

ATTACHMENT 2



GOVERNMENT
ACCOUNTABILITY
PROJECT

1612 K Street, NW, Suite #1100
Washington, DC 20006
(202) 457-0034 | info@whistleblower.org

BY EMAIL

June 28, 2021

Robert Stocksdales
Area Director, Savannah Area Office
Occupational Safety and Health Administration
United States Department of Labor
450 Mall Boulevard, Suite J
Savannah, GA 31406

Subject: Notice of Contest of the Proposed Abatement of Citations for Inspection No. 1505077

Dear Mr. Stocksdales:

Government Accountability Project is counsel for and an employee representative of [REDACTED] a [REDACTED] employee of LaSalle Southeast, LLC.

On June 7, 2021, LaSalle Southeast, LLC was served with citations based on an inspection of Irwin County Detention Center ("ICDC") at 132 Cotton Drive, Ocilla, GA, that was conducted December 8-10, 2020 in response to our client's OSHA complaint, filed December 2, 2020.

The citations were issued on June 7, 2021, and are described as follows: Citation No. 1, Item No. 1(a), which alleges a violation of 29 C.F.R. § 1910.134(c)(1); Citation No. 1, Item No. 1(b), which alleges a violation of 29 CFR § 1910.134(e)(1); Citation No. 1, Item No. 1(c), which alleges a violation of 29 CFR § 1910.134(f)(2); and Citation No. 1, Item No. 1(d), which alleges a violation of 29 CFR § 1910.134(k)(1)(i)-(viii). These citations were made in the context of the COVID-19 pandemic in response to the lack of a written respiratory protection program on respirator use, the lack of medical evaluations of employees required to wear a respirator, the failure to fit test employees for respirators, and the failure to train employees on how to properly use a respirator.

In accordance with section 10(c) of the Occupational Safety and Health Act of 1970 (29 USC §659(c)) and 29 CFR §1903.17(b)), Government Accountability Project issues this Notice of Contest for the Proposed Abatement of Citations because the time period fixed in the citation of 46 days for the abatement of the above-mentioned violation is unreasonable for the following reasons: 1) COVID-19 is known to spread through airborne droplets; 2) many detainees at ICDC have not been vaccinated and in fact COVID-19 cases are on the rise at ICDC and other detention centers in Georgia; 3) transfers of immigrant detainees, one of the most significant sources of spread in ICE detention facilities, continue unabated at ICDC; and 4) there is an ongoing outbreak of COVID-19 at ICDC. Pursuant to 29 CFR 1903.17(b), this notice should be immediately transmitted to the Occupational Safety and Health Review Commission.

It has now been more than a year since COVID-19 was declared a global pandemic.¹ It has been at least a year that we have known that masks and/or respirators are one of the most effective tools in preventing the spread of the lethal virus.² We have also known for more than a year that ICE detention facilities present a uniquely dangerous source of risk to the health and safety of workers, as well as to immigrant detainees and the public near those facilities.³ As congregate settings that make social distancing challenging, along with a constant flow of immigrants and workers transferring in and out of facilities (despite the recommendation of the CDC to limit transfers except when absolutely necessary),⁴ the need for respiratory protection to protect workers (as well as detainees and the public) from preventable illness and death becomes that much more paramount.

COVID-19 remains an ongoing pandemic, particularly within detention centers and prisons, so every day that workers in ICDC are not provided with adequate personal protective equipment (“PPE”) is another day that they could get sick. In addition, in Irwin County, only 26% of residents are fully vaccinated,⁵ meaning that the risk of COVID-19 spread does not stop at the doors of ICDC. To date, ICE does not have a federal plan to vaccinate detainees at any immigration detention facilities generally or ICDC specifically.⁶ Thus workers who are not provided with proper PPE are not only at risk of contracting and spreading COVID-19 within the facility but are at risk of infecting their fellow community-members as well.⁷

This risk is particularly salient considering the ongoing outbreak at ICDC, which has so far infected over 40 detainees according to sources on the ground who are representing these detainees on parole requests, with cases on the rise at ICDC and other facilities in Georgia.⁸ Further reports

¹ World Health Organization Director General, “WHO Director-General's opening remarks at the media briefing on COVID-19,” *WHO* (March 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

² Centers for Disease Control and Prevent, “CDC calls on Americans to wear masks to prevent COVID-19 spread,” *CDC Newsroom* (July 14, 2020), <https://www.cdc.gov/media/releases/2020/p0714-americans-to-wear-masks.html>

³ 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>; 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://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>

⁴ *Ibid*; Felipe De La Hoz, “Recent Covid-19 Spike in Immigration Detention Was a Problem of ICE’s Own Making,” *The Intercept* (June 20, 2021), <https://theintercept.com/2021/06/20/covid-asylum-detention-ice/>

⁵ Georgia Department of Public Health Vaccine Distribution Dashboard (last visited June 28, 2021), <https://experience.arcgis.com/experience/3d8eea39f5c1443db1743a4cb8948a9c>

⁶ 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>; Priscilla Alvarez, “Whistleblowers urge Biden administration to do more to vaccinate detained immigrant population,” *CNN* (June 25, 2021), <https://www.cnn.com/2021/06/25/politics/ice-coronavirus-vaccine/index.html>

⁷ Isabelle Niu and Emily Rhyne, “4 Takeaways From Our Investigation Into ICE’s Mishandling of Covid-19,” *New York Times* (April 25, 2021), <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>

⁸ Aja Arnold, “BREAKING: COVID-19 outbreaks in three housing units in Irwin County Detention Center,” *The Mainline* (February 13, 2021), <https://www.mainlinezine.com/breaking-covid-19-outbreaks-in-three-housing-units-in-irwin-county-detention-center/>; Andy Miller, “Stewart County Becomes COVID-19 Hot Spot As Cases Rise at Detention Center,” *Georgia Public Broadcasting* (June 22, 2021), <https://www.gpb.org/news/2021/06/22/stewart-county-becomes-covid-19-hot-spot-cases-rise-at-detention-center>.

indicate that despite a recent announcement that Immigration and Customs Enforcement's (ICE) will be ending its contract with LaSalle, that has not yet been implemented, and advocates report that detainees are continually being transferred into the facility, in violation of CDC guidelines.⁹ Given all of these factors, the need for a written respiratory program, fit testing, and training is immediate and cannot wait until July 23, 2021.

The cluster of citations issued to LaSalle regarding its failure to even have a written respiratory safety program, let alone to ensure workers were properly trained to use respirators, fit-tested, or given a medical evaluation to determine employees' ability to even use a respirator—citations issued in June 2021 for *violations that have been ongoing on for more than fifteen months*—demands immediate abatement to both protect workers at ICDC and to prevent further spread of COVID at that facility to detainees. OSHA in its citations implicitly recognizes that LaSalle was fully aware that COVID does not distinguish between workers and immigrant detainees in congregate settings, noting that LaSalle's failures to comply with OSHA guidelines for respiratory safety were in the context of the employer requiring "employees to wear respirators while cleaning rooms previously occupied by inmates potentially infected with COVID-19." See OSHA Citation and Notification of Penalty (June 7, 2021).

Not only does LaSalle have a responsibility to its employees to train them on when and how to properly wear a respirator so that they could avoid being infected by COVID-19, and to ensure that such protection was effective and medically safe for its workers, it *was aware* of the health and safety risks to workers associated with highly contagious COVID virus by requiring their use when cleaning rooms with potentially contagious immigrant detainees. By not having a plan in place for respiratory safety despite its awareness of the risk of exposure to a deadly virus amounts to knowing endangerment of its workers. The abatement should be required to be implemented in full immediately.

Based on the foregoing, [REDACTED] and Government Accountability, as [REDACTED] representative, request that the abatement period pertaining to the violations listed in the citation issued on be shortened to July 5, 2021 or earlier, to prevent the spread of COVID-19 among employees and detainees at ICDC, and thus the general population in Irwin County. Failure to curtail this abatement date could result in serious illness and/or death to the employees of LaSalle and the detainees as well, many of whom are forced to work under the work program administered through LaSalle and thus could be considered employees under the OSH Act.

We do want to also note for the record our concern about the OSHA's failure to issue a citation for LaSalle's lack of OSHA 300 logs and the alleged "equivalent forms" that LaSalle was maintaining. In particular, we note that the 2019 record is not an "equivalent" of an OSHA 300 log, as it lacks important information that would otherwise be listed on the OSHA 300.

⁹ Centers for Disease Control and Prevention, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," (Updated June 9, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

Specifically, the records from 2019 lack any information about the days away from work or job restrictions caused by the injuries, potentially obscuring the severity of the incidents reported. We are also concerned by the nature of record-keeping during 2020, as we note that, whereas the incidents in 2021 were recorded chronologically, the incidents in 2020 were recorded in a haphazard manner. This discrepancy leads us to question whether the 2020 logs were created before or after the inspection, as well as the degree of their accuracy and completeness, especially during a period when testing was questionable at best and accounting for illnesses from COVID were so critical to protecting other workers and detainee and public health. If the only logs available at the time of the inspection were those in the format of the 2019 logs, then LaSalle Southeast, LLC should have received a citation for failing to adequately record occupational injuries, as required under 29 C.F.R. § 1904.7.

Sincerely,

/s/

Samantha Feinstein, Esq.

Dana L. Gold, Esq.

Government Accountability Project

Counsel/Employee Representatives for 