Written Statement for the Record

by

Dana L. Gold, Esq.
Government Accountability Project

for the

Senate Committee on Homeland Security and Governmental Affairs
Permanent Subcommittee on Investigations

November 15, 2022 Hearing On Medical Mistreatment of Women in ICE Detention

Submitted: November 29, 2022

Dear Subcommittee Members:

Thank you for the opportunity to submit written comments in support of your hearing, “Medical Mistreatment of Women in ICE Detention.”

I serve as Senior Counsel for Government Accountability Project, a national non-profit whistleblower protection and advocacy organization. My organization currently represents several Department of Homeland Security (DHS) whistleblowers who have raised serious concerns about a range of issues plaguing the Immigration and Customs Enforcement (ICE) detention system, including the harmful impact of detention on
children, the spread of COVID-19 in immigration detention facilities, and the widespread use of solitary confinement on immigrants in civil detention.

On November 15, 2022, this Subcommittee conducted a hearing on Mistreatment of Women in ICE Detention. Most relevant to the hearing, we represent nurse Dawn Wooten, who in September 2020 made public whistleblower disclosures to the Department of Homeland Security and Congress about failures at the Irwin County Detention Center (ICDC) to protect against the spread of COVID and, more horrifically, that immigrant women in detention were undergoing nonconsensual, unnecessary, invasive gynecological procedures.

Ms. Wooten’s whistleblowing helped open the door for multiple women survivors, including Karina Cisneros Preciado who testified at this hearing, to come forward with their stories of medical mistreatment they experienced while detained at ICDC. The courageous truth-telling of Ms. Wooten and the accounts of the women survivors not only forced ICE to end its immigration contract with ICDC but were vital to prompting this Subcommittee’s investigation and the November 15th hearing.


The results of the Subcommittee’s investigation, shared at the November 15th hearing, validated and expanded on the reports of Nurse Wooten from 2020, including that disturbingly, ICE contracted medical provider for ICDC, Dr. Mahendra Amin, was responsible for more than 90% of four types of invasive gynecological procedures performed on the detained ICE population nationwide though ICDC held only 4% of the entire female population in ICE custody. 7 Chairman Ossoff noted the gravity of the abuses, stating, “It’s hard for me to think of anything worse […] than the federal government subjecting incarcerated women to needless gynecological surgery. It’s one of the most appalling things the Subcommittee has seen in the past two years.” 8

Furthermore, the Assistant Director of the ICE Health Service Corps (IHSC), Dr. Stewart Smith, indicated that from at least 2017-2020, the IHSC had virtually no oversight systems in place to vet contracted off-site medical providers or review the medical care they provided to people in ICE custody. 9 Indeed, this exchange between Chairman Ossoff and Dr. Smith demonstrated that but for Nurse Wooten’s whistleblowing, women would still be suffering medical mistreatment at ICDC:

Chairman Ossoff: “Why did your agency fail? How did you allow this to happen? How did you allow dozens if not hundreds of women to be subjected to unnecessary gynecological surgery? How did that happen?”

Dr. Smith: “Well we weren’t aware of these complaints until we…we weren’t aware of them until we received those…the whistleblower complaint, so we just didn’t have access to that information.”

Chairman Ossoff: “Why were you not aware? Why were you not aware that one doctor was performing nine-tenths of gynecological procedures but only seeing six percent of patients?”

Dr. Smith: “We didn’t have the proper systems in place to detect that information […]”10

---

7 Ibid., p. 5.
10 Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations Hearing on Medical Mistreatment of Women in ICE Detention, Testimony of Dr. Stewart Smith (November 15, 2022),
We have long highlighted the vital role whistleblowers play in exposing serious problems that otherwise would be undiscovered and unaddressed by the systemically weak oversight mechanisms of the opaque ICE detention system.\textsuperscript{11} Indeed, the medical mistreatment that occurred at ICDC and the apparent lack of medical oversight that the Subcommittee’s investigation exposed further evidences those weaknesses, and puts a fine point on why DHS whistleblowers are so important to promoting legal compliance and protecting the uniquely vulnerable population of immigrants in detention from medical harm.

Of course, whistleblowers notoriously suffer great costs for raising concerns—the risk of retaliation is real, thus the enforcement and administration of laws meant to protect whistleblowers from reprisal must be effective to both deter employers from engaging in unlawful retaliation and to ensure that other workers who witness wrongdoing are not chilled from speaking up.

There may be no more graphic example than Dawn Wooten’s case of the justice advanced by a whistleblower’s disclosures being matched only by the unjust costs suffered for blowing the whistle. While DHS acted quickly to address the shocking problems Ms. Wooten’s disclosures helped expose—announcing the decision over a year ago to end immigration detention at ICDC\textsuperscript{12}—the DHS OIG Whistleblower Protection Unit asked for multiple extensions beyond the 180-day statutory deadline for issuing findings in Ms. Wooten’s whistleblower retaliation complaint, which remains open more than two years after filing her complaint with DHS OIG.\textsuperscript{13} Meanwhile, Ms. Wooten continues to suffer enormous costs from her whistleblowing, from being demoted by LaSalle Corrections after raising concerns internally, to being explicitly blacklisted from

securing nursing jobs in her local community, to suffering ongoing security threats to herself and her children.

DHS and Congress both, by exercising their oversight authority and responsibility to address the medical mistreatment exposed by Ms. Wooten, have a responsibility to ensure that she is protected rather than punished for blowing the whistle on that mistreatment.

**Without Dawn Wooten’s Disclosures, Harm to Detained Immigrants at ICDC Might Continue Today**

In 2020, Ms. Wooten was employed as a nurse at the ICE-contracted ICDC, located in rural Georgia and owned and operated by LaSalle Corrections (LaSalle), one of the largest private prison companies in the country. Ms. Wooten began to raise concerns in the Spring and Summer of 2020 internally to supervisors and management about failures at ICDC to prevent the spread of COVID-19, as well as concerns that numerous immigrant women were receiving unnecessary, nonconsensual hysterectomies and other gynecologic procedures.¹⁴ In response to her raising these important issues internally, in July of 2020, Ms. Wooten was demoted from full-time to on-call status. No further work opportunities were provided to Ms. Wooten by LaSalle at ICDC.

Government Accountability Project, along with Project South, a grassroots organization based in Georgia with a long history of fighting abuses on behalf of immigrants detained in ICDC, filed a whistleblower retaliation complaint on Ms. Wooten’s behalf with the DHS Office of Inspector General (OIG) on September 8, 2020, alleging that LaSalle unlawfully retaliated against Ms. Wooten for disclosure of information she reasonably believed evidenced gross mismanagement and dangers to public health and safety in violation of 41 U.S.C. § 4712. Notice was provided to LaSalle management of this filing, noting Ms. Wooten’s protected legal status as a whistleblower.

On September 14, 2020, Project South along with other immigration advocacy organizations filed a second, public disclosure with DHS OIG, DHS’s Office for Civil Rights and Civil Liberties, the ICE Atlanta Field Office, and ICDC’s warden on behalf of

¹⁴ Whistleblowers are protected when they report abuse and misconduct they reasonably believe to be true. 41 U.S.C. § 4712(a). Ms. Wooten, as described in the September 14, 2020 complaint, reported her reasonable belief that there may have been mass hysterectomies performed on detained immigrant women at ICDC after hearing such concerns from multiple women and receiving no alternative explanation from management. *See infra* Fn. 15. Though the PSI investigation did not find that Dr. Amin performed “mass hysterectomies,” the Subcommittee nonetheless confirmed that hundreds of women were subjected to excessive and unnecessary gynecological procedures which led to sterilization or damaged reproductive health on numerous detainees—including D&C (dilation and curettage) procedures to remove uterine tissue, and laparoscopic surgeries—all without their informed consent. Permanent Subcommittee Staff Report, [https://www.hsgac.senate.gov/imo/media/doc/2022-11-15%20PSI%20Staff%20Report%20-%20Medical%20Mistreatment%20of%20Women%20in%20ICE%20Detention.pdf](https://www.hsgac.senate.gov/imo/media/doc/2022-11-15%20PSI%20Staff%20Report%20-%20Medical%20Mistreatment%20of%20Women%20in%20ICE%20Detention.pdf), (pp. 4-17).
both detained immigrants at ICDC and Ms. Wooten, incorporating by reference Ms. Wooten’s previous disclosures and further documenting concerns regarding the deliberate lack of medical care provided to immigrants in detention, unsafe work practices, the absence of adequate protection against COVID-19, and invasive gynecological procedures performed on several women with dubious consent.15

This latter disclosure, first reported by The Intercept, went viral in the press after Law & Crime published an explosive headline focusing on Ms. Wooten’s disclosures about the medical mistreatment of immigrant women at ICDC.16 Widespread media coverage about Ms. Wooten's disclosures of the abuses at ICDC catalyzed profound and necessary

---


accountability by prompting multiple Congressional and agency investigations, inquiries from entities of the United Nations, a class action lawsuit seeking justice for


18 See, e.g., DHS Office of the Inspector General, “Medical Processes and Communication Protocols Need Improvement at Irwin County Detention Center,” January 3, 2022, https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-14-Jan22.pdf (noting that two other investigations are forthcoming from DHS OIG, one focused on the gynecological procedure process at ICDC, the other being an audit focused on how surgical procedures are authorized and approved across ICE detention facilities). DHS’s Office for Civil Rights and Civil Liberties also conducted an investigation into the complaints about medical care at ICDC. See Daniel Kronenfeld, “U.S. Response to UN Joint Urgent Appeal Regarding Alleged Human Rights Abuses at the Irwin County Detention Center,” The Permanent Mission of the United States of America to the United Nations and Other International Organizations in Geneva (May 10, 2021), http://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36234 (noting that “Over the past three U.S. Federal Government Fiscal Years (from October 1, 2017 to September 30, 2020), CRCL has also received many additional complaints about the medical care at ICDC, including the medical treatment of detainees with HIV, as

Written Testimony from Dana L. Gold, Esq., Government Accountability Project
Senate HSGAC/PSI November 15, 2022 Hearing on Medical Mistreatment of Women in ICE Detention
November 29, 2022
Page 7 of 12
the women survivors' mistreatment, and ultimately, DHS Secretary Alejandro Mayorkas's decision in May 2021 to order ICE to end its immigration contract with ICDC, stating "We will not tolerate the mistreatment of individuals in civil immigration detention or substandard conditions of detention."21 In September 2021, a year after Ms. Wooten's disclosures gripped the country with the horrific enormity of what was then transpiring at the ICDC facility, the last people held in immigration custody were transferred out of ICDC.22

Rarely has a whistleblower helped catalyze such profound change so quickly. Ms. Wooten has been recognized and valorized for her truth-telling: she was named a Giraffe Hero by the nonprofit Giraffe Heroes Project,23 was chosen as a subject for the Americans Who Tell the Truth portrait series,24 and has been the recipient of several national awards, including the 2021 Joe Callaway Award for Civic Courage,25 the Feleta Wilson award from the Public Health Nursing Section of the American Public Health Association,26 the 2022 Physicians for Human Rights (PHR) Award,27 and the 2022

____________________________________________________________
HMH Foundation First Amendment Award\textsuperscript{28} for her commitment to truth-telling and human rights.

Ms. Wooten’s revelations demonstrate the crucial role of whistleblowers in exposing abuses to prompt oversight and accountability. Indeed, but for Ms. Wooten’s whistleblowing, the horrific abuses against immigrant women at ICDC might have continued unabated.

**DHS Whistleblowers Need Better Protection from Retaliation**

DHS has taken concrete, affirmative steps in direct response to its decision to investigate Ms. Wooten's whistleblowing disclosures, filed individually with the Department on September 8, 2020 and more expansively with accounts of detained immigrants on September 14, 2020. Secretary Mayorkas ordered an end to the detention of immigrants in ICE custody at ICDC in September 2021,\textsuperscript{29} DHS OIG issued a report in January 2022\textsuperscript{30} largely validating Ms. Wooten’s disclosures regarding failures to protect workers and immigrants from COVID-19 and inadequate medical care, and this Subcommittee’s investigation validated the volume of nonconsensual and unnecessary gynecological procedures conducted on women detained at ICDC.\textsuperscript{31}

But DHS OIG’s delay in issuing investigative findings related to the medical mistreatment of immigrant women as well as in Ms. Wooten’s whistleblower retaliation complaint, however, reflects an utter failure of the oversight system within DHS.

Notably, at an April 21, 2021 hearing of the U.S. House Committee on Homeland Security, Representative Sheila Jackson Lee specifically asked Inspector General Cuffari about the status of the investigative reports that 173 members of congress called for and were waiting on into the abuses at ICDC and the retaliation of Ms. Wooten for her

\textsuperscript{28} HMH Foundation, "The 2022 First Amendment Awards,” \url{https://www.hmhfoundation.org/first-amendment-awards/} (last visited November 2, 2022)

\textsuperscript{29} Department of Homeland Security, “ICE to Close Two Detention Centers,” (May 20, 2021), \url{https://www.dhs.gov/news/2021/05/20/ice-close-two-detention-centers}


\textsuperscript{31} United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, “Medical Mistreatment of Women in ICE Detention,” Staff Report (November 15, 2022), \url{https://www.hsgac.senate.gov/imo/media/doc/2022-11-15%20PSI%20Staff%20Report%20%20Medical%20Mistreatment%20of%20Women%20in%20ICE%20Detention.pdf}
whistleblowing. 32 Dr. Cuffari testified, “we are getting to the point where we are completing that work.” 33

Yet nearly 19 months since that hearing, Ms. Wooten’s retaliation case remains unresolved, and at least two DHS OIG investigations remain open: an investigation into the approval process for gynecological procedures at ICDC referred to the OIG Office of Investigations, and an audit focusing on how surgical procedures are authorized and approved for detained immigrants across all ICE detention facilities. 34 Indeed, at this Subcommittee’s November 15th hearing, Dr. Cuffari could not provide a response as to when he expected his office to complete the OIG’s investigation at ICDC. 35 Meanwhile, various NGOs and Congressional committees have issued reports from their own investigations documenting violations at Irwin County Detention Center, raising further questions about DHS’s commitment to its duty to protect both the whistleblowers it relies on for oversight and the immigrants in its custody. 36

---


36 See Citizens for Responsibility and Ethics in Washington (CREW), National Immigration Project of the National Lawyers Guild, Project South, “Deliberate Indifference: Records show ICE’s systemic failures at Georgia detention facility at the center of gynecological abuse investigations,” (June 3, 2021), https://projectsouth.org/wp-content/uploads/2021/06/ICE-ICDC-Report.pdf (finding through FOIA documents that an outside gynecologist billed ICE for at least 71 invasive procedures from 2015 to 2020, violations of ICE detention standards for medical care and vetting medical providers, recurring deficiencies relating to healthcare, detention conditions, and mistreatment of people detained at the facility, and a history of complaints lodged with ICE by the Mexican Consulate and advocates, with claims of abuse and neglect at ICDC going back as far as 2018); Project South, Georgia Detention Watch, Georgia Latino Alliance for Human Rights, South Georgia Immigrant Support Network, Harvard Immigration and Refugee Clinic, and Harvard Law School Immigration Project, “Violence & Violation: Medical Abuse of Immigrants Detained at the Irwin County Detention Center,” (Sept. 14, 2021), https://projectsouth.org/wp-content/uploads/2021/09/IrwinReport_14SEPT21.pdf (report featuring firsthand testimonies from 14 immigrant women formerly detained at ICDC who underwent gynecological procedures without their full knowledge and consent); Letter from the House Committees on Homeland Security and Oversight and Reform to Secretary Mayorkas (Dec. 3, 2021), https://homeland.house.gov/imo/media/doc/Letter-DHS%20ICDC%20Update.pdf (letter to Secretary Mayorkas referencing the conclusions of an independent medical expert who reviewed medical records created by the primary physician involved in complaints at ICDC and found that the doctor “did not meet acceptable standards” of care and that the doctor “performed evaluation and treatment that ‘did not address [the patient’s] primary issue’ but ‘instead he did a variety of tests and surgery that did them little or no good, and potentially caused harm.’”)

Written Testimony from Dana L. Gold, Esq., Government Accountability Project
Senate HSGAC/PSI November 15, 2022 Hearing on Medical Mistreatment of Women in ICE Detention
November 29, 2022
Page 10 of 12
We are concerned that DHS's decision in May 2021 to end the ICE contract at ICDC based on unreleased findings from investigations catalyzed in substantial part by Ms. Wooten’s disclosures has had the unintended but real effect of exacerbating the costs of the retaliation she has experienced by making her more vulnerable to ongoing threats and blacklisting. Widely recognized in her local community as “The Whistleblower” responsible for bringing scrutiny to ICDC, she, rather than those responsible for the medical mistreatment, is blamed for the economic fallout to the community from DHS’s decision to end immigrant detention. Further, by ending the contract before issuing findings, DHS may have impeded access to documents and witnesses relevant to the investigation of Ms. Wooten’s whistleblower retaliation claim.

Ms. Wooten, while waiting for DHS OIG to issue findings in her case, continues to demonstrate profound resilience as she carries the emotional, physical, and financial burden of her whistleblowing. She has experienced serious threats to her and her children’s security with references made to her whistleblowing. She has experienced overt blacklisting by dozens of employers, largely unable to secure or retain work as a nurse despite the high demand in the profession during the pandemic. And while she has not actually been fired from ICDC, she has never been called back to work there since she was demoted from a full-time to an “as-needed” nursing position after raising concerns internally about conditions at the facility, even as LaSalle continues to be “urgently hiring” for nurses at ICDC.

While we applaud the concrete actions the Department has taken in response to Ms. Wooten’s disclosures, the agency has a simultaneous legal and ethical duty of care to Ms. Wooten that it has neglected. Its deferral of justice flies in the face of the intent and spirit of whistleblower protection laws. Worse, it has likely deterred other workers from coming forward about abuses in immigration detention, rightly fearful about the risk of devastating retaliation without meaningful recourse.

We will never know how many more individuals held in immigration custody or detention facility staff would have fallen gravely ill or even perished as a result of

inadequate medical and hygiene protocols during the pandemic, or how many more women would be rendered unable to reproduce as a result of unnecessary gynecological procedures performed without informed consent, but for Ms. Wooten's cataclysmic disclosures. Ms. Wooten's whistleblowing is a cautionary tale of what society stands to gain by whistleblowers and, conversely, what we stand to lose when employees stay silent rather than speak up about wrongdoing.

We applaud Chairman Ossoff's past advocacy on behalf of detained immigrants and deeply appreciate the Subcommittee's commitment to investigating the horrific medical misconduct experienced by the immigrant women formerly detained at the ICDC. We urge the Subcommittee to consider the critical role that whistleblowers like Dawn Wooten play in shedding light on dangerous conditions and abuses within the ICE detention system, and to investigate the DHS OIG's failure to prioritize the issuance of findings in her retaliation claim.

Thank you for the opportunity to contribute written testimony in support of this hearing.

Dana L. Gold, Esq.

---

40 See, e.g., Senate Committee on Homeland Security and Governmental Affairs Hearing on DHS Actions to Address Unaccompanied Minors at the Southern Border (May 13, 2021), https://www.hsgac.senate.gov/hearings/dhs-actions-to-address-unaccompanied-minors-at-the-southern-border (Chairman Ossoff questioning DHS Secretary Alejandro Mayorkas more than a year ago about the Department's expansive and problematic use of private detention and the abuses perpetrated against immigrant women at a Senate oversight hearing).