



By Electronic Mail

March 8, 2023

Re: Protected Whistleblower Disclosure – Renewed Concerns of DHS Medical Experts Regarding Harms to Children Caused by Family Detention

Dear President Biden and Secretary Mayorkas,

Below please find a written whistleblower disclosure from our clients, Drs. Scott A. Allen and Pamela McPherson, outlining the substantial danger to the health and safety of immigrant children and their families posed by family detention. Their letter is prompted by their concern about the announcement that the administration is considering reinstatement of this harmful policy and practice.

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

As documented in the attached disclosure, Drs. Allen and McPherson have raised concerns in the past two previous administrations, as well as to your current administration, about the known medical and psychological harms to immigrant children caused by DHS detention. Their concerns, supported and echoed by the medical community, warrant particular attention in light of their extensive experience documenting pervasive weaknesses in the DHS detention system which compromise the ability of DHS to meet minimal standards of care for children. These systemic failures to adequately care for children in custody exacerbate the well-established medical consensus that detention for any amount of time is harmful to children.

On behalf of our clients we urge you to remove the detention of families from your consideration and instead seek solutions that do not knowingly cause harm to children and their families.

Sincerely,

/s/

Dana L. Gold, Senior Counsel
Andrea Meza, Immigration Counsel
Attorneys for Drs. Allen and McPherson

March 8, 2023

VIA ELECTRONIC MAIL

The Hon. Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Avenue, NW
Washington, DC 20528

**Re: Renewed Concerns of DHS Medical Experts Regarding Harms to Children
Caused by Family Detention**

Dear President Biden and Secretary Mayorkas,

We are physicians—an internist and an adult and child/adolescent psychiatrist—with expertise in medical care in detention settings.¹ We currently serve as subject matter experts for the

¹ I, Dr. Scott Allen, am a board certified in Internal Medicine and is a Fellow of the American College of Physicians. I am a Professor Emeritus of Medicine, a former Associate Dean of Academic Affairs and former Chair of the Department of Internal Medicine at the University of California Riverside School of Medicine. From 1997 to 2004, I was a full-time correctional physician for the Rhode Island Department of Corrections; for the final three years, I served as the State Medical Program. I have published over 25 peer-reviewed papers in academic journals related to prison health care and am a former Associate Editor of the International Journal of Prisoner Health Care. I am the court appointed monitor for the consent decree in litigation involving medical care at Riverside County Jails. I have consulted on detention health issues both domestically and internationally for the Open Society Institute and the International Committee of the Red Cross among others. I have worked with the Institute of Medicine on several workshops related to detainee healthcare and serve as a medical advisor to Physicians for Human Rights. I am the co-founder and codirector of the Center for Prisoner Health and Human Rights at Brown University and a former Co-Investigator of the University of California Criminal Justice and Health Consortium. I am also the founder and medical director of the Access Clinic, a primary care medical home to adults with developmental disabilities.

I, Dr. Pamela McPherson, am a medical doctor triple boarded in general, child and adolescent, and forensic psychiatry. I have practiced medicine for over 30 years. I currently serve as the child and adolescent psychiatrist at the Shreveport Behavioral Health Center, a regional state sponsored clinic in northwest Louisiana. In addition to providing mental health care to children and their families, I teach child and adolescent psychiatry fellows and forensic psychiatry fellows at the LSU Health Sciences University in Shreveport, Louisiana as gratis faculty. I have qualified as a forensic psychiatry expert in juvenile and adult matters and have participated in research and presented at national and international conferences regarding the mental health of justice involved youth. I have a special interest in juvenile justice, specifically conditions of confinement. In addition to acting as an expert for the Civil

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

We write because we are gravely concerned about credible news reports and confirmed by Secretary Mayorkas in a March 7, 2023 media interview, that your administration is considering re-implementation of the detention of families, a practice which you are laudably responsible for ending at the beginning of your term.² We have raised our concerns in each of the past two administrations of the indisputable fact that the detention of children is harmful to their health. Indeed, DHS' own Advisory Committee on Family Residential Centers stated in 2016 that detention should be presumed inappropriate and unnecessary for families, and that "detention is never in the best interest of children."³ As there is a substantial literature documenting harms to children in confinement, the consensus of the medical profession stands in opposition to family detention, and our concerns about the risks associated with family detention have been echoed repeatedly by leading medical professional associations.⁴

Rights/Civil Liberties Office of DHS, I have served as an expert on mental health services to justice involved youth in pre-adjudicatory (San Francisco, Detroit, and Los Angeles) and post-adjudicatory (Montana, Louisiana, and New Mexico) juvenile facilities for the United States Department of Justice, Youth Law Center and the ACLU.

² Eileen Sullivan and Zolan Kanno-Youngs, "U.S. Is Said to Consider Reinstating Detention of Migrant Families," New York Times (March 6, 2023),

https://www.nytimes.com/2023/03/06/us/politics/biden-immigration-family-detention.html?te=1&nl=from-the-times&emc=edit_ufn_20230307; Christine Amanpour, Interview with Secretary Mayorkas, CNN (March 7, 2023), <https://twitter.com/amanpour/status/1633169567265730563>

³ Report of the DHS Advisory Committee on Family Residential Centers, September 30, 2016,

<https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.

⁴ See, e.g., Academic Pediatric Association, American Academy of Pediatrics, American Association of Child & Adolescent Psychiatry, American College of Physicians, American Medical Association, et al, Letter to House Judiciary Committee, House Energy and Commerce Committee, House Homeland Security Committee, and House Appropriations Committee (July 24, 2018),

https://www.acponline.org/acp_policy/letters/letter_house_oversight_request_on_child_detention_centers_2018.pdf;

American College of Physicians, Internists Call for Congressional Oversight of Family Detention (July 20, 2018),

<https://www.acponline.org/acp-newsroom/internists-call-for-congressional-oversight-of-family-detention> (letters validating disclosures of Drs. Allen and McPherson regarding harm to children in detention and calling for oversight); American Academy of Pediatrics, "Seeking Safe Haven: Detention of Immigrant Children & Families," HealthyChildren.org (March 13, 2017), <https://healthychildren.org/English/healthy-living/emotional-wellness/Building-Resilience/Pages/Detention-of-Immigrant-Children.aspx>;

Andis Robeznieks, "Congress Told Impact Of Immigrant Children's Trauma May Be Lifelong," American Medical Association, (July 12, 2019), <https://www.ama-assn.org/delivering-care/population-care/congress-told-impact-immigrant-child>;

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

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

Saul Levin, "APA Letter to U.S.

Letter from Drs. Scott A. Allen and Pamela McPherson to President Biden and Secretary Mayorkas on Proposed Reinstatement of Immigrant Family Detention

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Moreover, our experience conducting numerous oversight visits at the various iterations of family detention facilities, including in Artesia, New Mexico, Karnes City, Texas, Dilley, Texas, and Leesport, Pennsylvania, has led us to conclude that the DHS detention apparatus is systemically incapable of meeting minimum standards of care for children in its custody. For example, over the years we have consistently observed limitations in capacity to provide meaningful translation services for medical care, a dearth of qualified medical professionals, and evidence of concerning oversight weaknesses.

Importantly, our observations included periods of both prolonged and shortened detention of families. Shorter lengths of detention did not sufficiently mitigate the harmful conditions that we observed and their deleterious consequences; most of the harms we documented were in families detained less than 20 days. Indeed, the medical literature confirms that no amount of time spent in detention is safe for children.⁵

We shared our concerns internally with DHS Office for Civil Rights and Civil Liberties, warning about the dangers to children at the family detention centers generally while noting serious deficiencies we found in the course of our investigations. When the past administration ended its family separation policy, then pivoted to increasing its use of family detention, we felt compelled starting in July 2018 to speak out publicly, and repeatedly, as whistleblowers, warning not only CRCL but the DHS Office of Inspector General, Congress, and the public that migrant children were at risk of imminent, foreseeable harm in family detention settings because of the systemic inability of the facilities to meet even minimum standards of care, let alone prevent medical and mental health harm to children.⁶

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

⁵ American Academy of Pediatrics, Detention of Immigrant Children Policy Statement, (May 1, 2017), <https://publications.aap.org/pediatrics/article/139/5/e20170483/38727/Detention-of-Immigrant-Children?autologincheck=redirected> (noting that “expert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children.”)

⁶ See, e.g., Drs. Scott Allen and Pamela McPherson, Letter to Senate Whistleblower Caucus Chairs, (July 17, 2018), <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>; Miriam Jordan, “Whistle-blowers Say Detaining Migrant Families ‘Poses High Risk of Harm’” New York Times (July 18, 2018), <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html>; Comment of Dr. Scott Allen and Dr. Pamela McPherson on the Immigration and Customs Enforcement Bureau (ICEB) Proposed Rule: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, <https://www.regulations.gov/document?D=ICEB-2018-0002-18931> (November 5, 2018); Drs. Scott Allen and Pamela McPherson, “Whistleblowers Renew Challenges to Family Detention,” Letter to House and Senate Judiciary, Senate Homeland Security and Gov’t Affairs, and House Homeland Security Committees, (March 19, 2019), <https://jayapal.house.gov/wp-content/uploads/2019/03/031919-whistleblowers-letter-to-Congress-w-cover-letter-fact-sheet-re-children-in-detention.pdf>

Most recently, we repeated our warnings of the dangers of family detention to this administration in 2021 to underscore that detention is not a humane alternative to expulsions under Title 42 authority.⁷

Nothing has changed since we began to sound the alarm about the harms inherent to the detention of children. We have no reason to believe that the conditions of custody will adequately protect the medical and mental health needs of families in detention. In fact, the fundamental flaw that gives rise to harm is the detention of children and families itself. No amount of programming can ameliorate the harms created by the very act of confining children to detention centers.

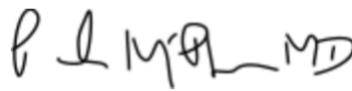
As medical professionals, we once more have a duty to warn the administration of imminent harm to children and their families. With clear warnings from the medical community, any effort to again implement the practice of family detention is a decision to knowingly create substantial and specific harm to children and has no place in a humane and just border policy.

We continue to be happy to contribute our expertise in detention health to the Department and other oversight bodies to protect against adverse medical and mental health effects of detention on children. Our legal counsel, Dana Gold and Andrea Meza at the Government Accountability Project, are supporting and coordinating our efforts to communicate these serious issues to you and other oversight entities. Please contact Ms. Gold at danag@whistleblower.org, or Ms. Meza at andream@whistleblower.org, with any questions.

Sincerely,



Scott A. Allen, MD, FACP



Pamela McPherson, MD

CC:

Peter Mina
Senior Official Performing the Duties of the Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

Tae Johnson
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

⁷ Drs. Scott A. Allen and Pamela McPherson, Letter to Congress on the Ongoing Risks of Harm from Detention to Migrant Children and Families (May 24, 2021), <https://whistleblower.org/wp-content/uploads/2021/05/052421-letter-to-Cong-from-doctors-re-child-family-detention.pdf>

Senator Jeff Merkley
Senator Mazie Hirono
Representative Pramila Jayapal
Senator Cory Booker
Senator Edward Markey
Senator Ron Wyden
Senator Tina Smith
Representative Judy Chu
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