



Written Statement for the Record

by

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Government Accountability Project

for the

House Committee on the Judiciary
Subcommittee on Immigration and Citizenship

Hearing On

The Expansion and Troubling Use of ICE Detention

September 26, 2019

Dear Committee Members:

Thank you for the opportunity to submit written comments in support of your hearing, “The Expansion and Troubling Use of ICE Detention.”

I serve as Senior Counsel for Government Accountability Project, a national not-for-profit whistleblower protection and advocacy organization. My organization currently represents three DHS whistleblowers, Dr. Scott Allen, Dr. Pamela McPherson, and Ms. Ellen Gallagher, who have raised serious concerns about the very topic of this hearing: the expansion and troubling use of ICE detention, and more specifically, the real threat of physical and psychological harm posed by ICE detention practices. That these whistleblowers’ disclosures have gone unheeded by DHS and ICE while detention has rapidly expanded under the administration’s “zero-tolerance” immigration policy is troubling in itself; the effects of that expansion are not merely troubling, but unconscionable.

By describing for the Committee in some detail the nature of the warnings raised by these whistleblowers about harmful ICE detention practices, which have only been exacerbated by expanded detention, Congress, along with the DHS, can again be on notice that current ICE detention practices not only violate federal detention standards, but threaten the health and safety of migrant detainees in

ICE detention facilities. This situation must be fully investigated and reformed to prevent the foreseeable harm about which these whistleblowers have sought to address.¹

A. Knowing Endangerment of Children in Detention

Our clients Drs. Allen and McPherson serve respectively as the medical and mental health subject-matter experts in detention for the Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL). In the course of investigating four of the Family Residential Centers for CRCL between 2014-2017—Artesia in New Mexico, Karnes and Dilley in Texas, and Berks in Pennsylvania—Drs. Allen and McPherson consistently raised concerns in their reports to CRCL as well as in extensive oral briefings about both the harms posed to children in detention generally as well as specific and systemic problems related to practices and policies at the family detention centers that endangered children. Indeed, their findings resulted in shutting down Artesia as too rife with problems to protect children at that facility.

When the Trump administration began expanding family detention as part of its “zero-tolerance” immigration policy, the doctors became gravely concerned that the issues that compromised care, and which had not yet been resolved, would be further exacerbated with the increased populations. This predictably put children at imminent risk of harm. In June 2018, Drs. Allen and McPherson exercised their rights as whistleblowers by communicating these concerns to CRCL management, to the DHS OIG, and to Congress.²

In addition to their overarching warnings that detention, **for any amount of time**, harms children, their specific concerns about systemic weaknesses at detention facilities included the lack of qualified medical and mental-health professionals; a lack of language translators making diagnoses exceedingly difficult; inadequate and dangerous facilities posed by the retrofitted prisons used to house families with small children; failure to provide trauma informed care; lack of training of custodial staff to care for at-risk children; inadequate detention standards; and confusing lines of authority and weak coordination between different agencies, program partners and government departments that can cause dangerous communication breakdowns and accountability failures that put children at risk.

CRCL refused to investigate the doctors' concerns, claiming that the Inspector General had jurisdiction over their complaint. However, the OIG never acknowledged receipt of let alone conducted an investigation into Drs. Allen and McPherson's disclosures, first submitted on June 25, 2018, despite the doctors' explicit warnings that a hastily deployed expansion of family detention unnecessarily places children at **imminent threat of risk** of significant mental health and medical harm.

Notably, CRCL has not conducted onsite investigations of family detention centers since **September 2017**, despite being aware of the systemic problems that put children in detention at risk of physical

¹ The following descriptions of our clients' disclosures are substantially similar to those included in testimony I recently submitted for a related House Homeland Security Committee Hearing, *Oversight of ICE Detention Facilities: Is DHS Doing Enough?* (Hearing Date: September 26, 2019).

² See, e.g., July 17, 2018 [Letter to Senate Whistleblower Caucus Chairs](#) from Drs. Scott Allen and Pamela McPherson.

and psychological harm and despite receiving numerous complaints from or on behalf of detainees which would justify investigation.³

Not only did the doctors receive no indication from DHS oversight mechanisms that their concerns were being addressed, their warnings about harms to children in detention, echoed by more than fourteen medical professional associations, including the American Medical Association, the American Academy of Pediatrics, the American College of Physicians, and the American Psychiatric Association,⁴ were being willfully ignored, as DHS in September 2018 proposed rule-making to replace the *Flores* settlement agreement, having the intended effect of allowing for prolonged and indefinite detention of children. Drs. Allen and McPherson, in [written comments](#) to DHS and ICE, expressed their opposition to practices that would prolong detention of children, particularly while the systemic issues they had identified that pose imminent harm remained unaddressed.

With all oversight mechanisms failing to end detention of children, the doctors escalated their concerns to the press by going on the record with *60 Minutes*, *NPR*, and *The Washington Post*, writing in December 2018 after the death of seven year old Jakelin Caal Maquin in CBP custody, “[We warned DHS that a migrant child could die in custody. Now one has.](#)”

Rather than minimize detention as its own ICE Advisory Panel recommended in 2016,⁵ DHS decided instead to prolong detention indefinitely in its recent [final rule replacing the Flores Settlement Agreement standards](#), reflecting not only a disregard of its own medical and mental health subject matter experts within its own oversight entities, but the willful endangerment of migrant children in order to deter migration at the southern border.

Further, DHS recently announced just days ago that it [intends to resume detaining migrant families at the Karnes County Residential Center](#),⁶ one of the detention facilities about which Drs. Allen and McPherson identified concerns about the ability to prevent harm to children. Given that CRCL has not conducted any on-site investigations of DHS family detention centers since September 2017, it belies credulity to think Karnes will have remedied the myriad problems identified by Drs. Allen and McPherson that existed even before a surge in family detention. Expansion of detention in the face of known systemic problems not only puts employees at these facilities in the impossible situation of not

³See March 19, 2019 Letter to Congress from Drs. Allen and McPherson, <https://jayapal.house.gov/wp-content/uploads/2019/03/031919-whistleblowers-letter-to-Congress-w-cover-letter-fact-sheet-re-children-in-detention.pdf>.

⁴ See Letter to House Judiciary Committee, House Energy and Commerce Committee, House Homeland Security Committee, and House Appropriations Committee (July 24, 2018) (letter viewable at https://www.acponline.org/acp_policy/letters/letter_house_oversight_request_on_child_detention_centers_2018.pdf); Letter to Senate Judiciary Committee, Senate HELP Committee, Senate HSGAC Committee, and Senate Appropriations Committee (July 24, 2018) (letter viewable at <https://www.psychiatry.org/newsroom/news-releases/apa-joins-health-care-community-in-calling-on-congress-to-hold-hearings-on-treatment-of-children-separated-from-parents-at-border>); 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>.

⁵Report of the ICE Advisory Committee on Family Residential Centers (October 7, 2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/acfc-report-final-102016.pdf>

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being able to provide adequate care for families under such conditions, but it foreseeably poses an imminent threat of harm to children.

B. ICE's Widespread Use of Solitary Confinement on Mentally Ill and Medically Vulnerable Adult Detainees

Attorney Ellen Gallagher, when working as a Senior Policy Advisor within the immigration section of DHS's Office of Civil Rights and Civil Liberties, discovered in reading hundreds of ICE segregation reports that ICE was regularly putting mentally ill and medically vulnerable adult migrant civil detainees in solitary confinement across dozens of ICE facilities in violation of statutory mandates and federal detention standards, practices that qualify as [torture under United Nations standards](#). Often segregation was used for reasons directly related to their mental illness.

These practices revealed that detainees—notably in civil detention which is by definition not punitive—were deprived of proper medical care and attention, even when suicidal; many were shackled, strip-searched, silenced, and brutalized; others missed immigration court dates that otherwise might have enabled them to seek bond, legal protection and counsel.

Examples she discovered and disclosed were, often on the face of the segregation reports and in the notes, egregious and troubling. One detainee was diagnosed with schizoaffective disorder with hallucinations and suicidal ideation, yet spent months in and out of solitary confinement before being sentenced to 390 more days for throwing his feces at a security guard. Another was sentenced to 45 days in “twenty-four-hour lockdown” because guards during a search of his cell found a single anti-anxiety pill, hidden in a book he was reading. Detainees on “suicide watch” were routinely placed in isolation without information as to the length of time they would remain there, whether or how frequently they would be monitored, or the medical treatment they would receive. Reports from a regional jail showed mentally ill immigration detainees naked in deplorable conditions and denied reentry to the general population until they agreed to maintain “proper hygiene.” Other detainees were sentenced to periods from 15 to 45 days in disciplinary segregation for offenses including “insolence,” “spitting,” “possession of a cellphone,” “failure to follow an order,” “attempted horseplay” and “attempted fighting.”

Ms. Gallagher began raising concerns in 2014 about ICE's practices internally to CRCL management, which repeatedly chose not to investigate the individual cases she raised that evidenced serious violations of detention standards. She then raised concerns to DHS's Office of Inspector General (OIG), and also filed a whistleblower disclosure with the Office of Special Counsel (OSC). The OSC deferred to the OIG, which failed to investigate the full scope of Ms. Gallagher's disclosures. Despite two separate requests for reconsideration to the OSC to independently review the disclosures and supporting evidence, the OSC instead deferred to the OIG's own incomplete investigation. During this period as well, Ms. Gallagher's disclosures to Congress did not generate meaningful action.

In May 2019, Ms. Gallagher finally decided to go [on the record](#) after years of raising her concerns through every avenue within the government had failed to result in any meaningful investigation to address the widespread use of solitary confinement in immigration detention.⁷

On June 3, 2019, the Department of Homeland Security Office of Inspector General (DHS OIG) issued a report, [Concerns about ICE Detainee Treatment and Care at Four Detention Facilities](#), that failed to address the systemic abuses and violations across ICE facilities reported by Ms. Gallagher, instead focusing on wrongdoing at only the four adult detention facilities it visited. The OIG report found, among other violations, that three out of four sites visited used improper segregation practices which both violated ICE policy standards and infringed upon detainee rights. The findings included premature placement into solitary confinement, use of restraints at all times when detainees were outside their cells, strip searches upon entering isolation, and inadequate time outside cells. While this report's conclusions substantively confirmed Ms. Gallagher's disclosures, made over a period of almost five years and documenting hundreds of examples of ICE's inappropriate use of solitary confinement, the report's recommendations were limited only to reforms at the four facilities visited by the OIG.

Despite the limited scope of the OIG's investigation and findings, Ellen Gallagher's warnings regarding ICE's use of solitary confinement were recently validated and expanded upon by the Project on Government Oversight (POGO), which last month released a [report](#), *ISOLATED: ICE Confines Some Detainees with Mental Illness in Solitary for Months*, demonstrating that approximately 40% of detainees placed in solitary confinement between January 2016 and May 2018 have mental illness, with more than 4,000 of the 6,559 records reviewed showing detainees being confined for more than 15 days. Ms. Gallagher's disclosures about ICE's inappropriate use of solitary confinement across dozens of its facilities have thus been confirmed as continuing and increasing.

C. The Expansion of ICE Detention Amounts to Knowing Endangerment of Vulnerable Migrant Detainees

Despite the fact that these civil servants—DHS's own experts—have communicated their specific and verified concerns with increasing escalation, the detention practices they have warned as being harmful to migrant detainees have not only continued, but have increased in the surge of detention under the Trump administration's "zero-tolerance" immigration policy. DHS oversight functions have further failed to investigate and step in to address the whistleblowers' disclosures, having the effect of allowing the knowing endangerment of children and vulnerable adult migrant detainees in ICE detention facilities.

⁷ See Maryam Saleh and Spencer Woodman, "[A Homeland Security Whistleblower Goes Public About ICE Abuse of Solitary Confinement](#)," *The Intercept* (May 21, 2019), and Hannah Rappleye et al., "[Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers](#)," *NBC News* (May 21, 2019). These press accounts also document Ms. Gallagher's efforts to disclose evidence of ICE's inappropriate use of solitary confinement in adult detention.

There is a dire need for legitimate oversight by Congress that captures the full extent of the conditions and practices at ICE detention facilities disclosed by DHS's own whistleblowers which have never been fully investigated or addressed by DHS oversight entities despite the seriousness of the risk of harm posed to children and vulnerable adult detainees. Indeed, to date, DHS has largely ignored these whistleblowers' warnings, as evidenced by its expansion of detention.

Whistleblowers are essential warning systems to prevent problems and address abuses. These whistleblowers gave DHS the opportunity to prevent harm to children and adult migrants in the civil detention system, but DHS in failing to heed their warnings continues to prioritize confinement and deterrence over not just compliance with minimum detention standards, but the duty to prevent foreseeable harm. The fact that these whistleblowers' disclosures have to date failed to prompt fundamental changes in ICE detention practices that knowingly harm children speaks to why Congress's oversight and investigation of these issues is so critical.

It should be noted that leadership at both the DHS OIG, where Ms. Gallagher currently works as a senior advisor, and at CRCL, for which Drs. Allen and McPherson continue to serve as contracted subject matter experts, have not taken any retaliatory action to date against any of our clients, recognizing the rights of employees and contractors to raise concerns about serious abuses. Indeed, these particular whistleblowers are deeply committed to serving in their current roles as valuable contributors to the important oversight roles of CRCL and the OIG. They also stand ready to support all of Congress's efforts to address the problems with expanded ICE detention about which they have been warning for years.

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

/s/

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