



July 10, 2020

Honorable Bennie Thompson Chair House Committee on Homeland Security Washington, D.C. 20515

Honorable Mike Rogers Ranking Member House Committee on Homeland Security Washington, D.C. 20515 Honorable Kathleen Rice Chair House Homeland Security Subcommittee on Border Security, Facilitation & Operations Washington, D.C. 20515

Honorable Clay Higgins Ranking Member House Homeland Security Subcommittee on Border Security, Facilitation & Operations Washington, D.C. 20515

Re: Whistleblower Disclosures on COVID-19 -- Private Contractors Mismanaging ICE Detention Facilities Are Endangering Public Health and Safety

Dear Committee and Subcommittee Chairpersons and Ranking Members:

Government Accountability Project submits this letter for the record to summarize information from whistleblowers concerning mismanagement of COVID-19 issues by LaSalle Corrections (LaSalle), a private company contracted by U.S. Department of Homeland Security (DHS) Immigrations and Customs Enforcement (ICE) to operate immigration detention facilities.

Government Accountability Project is a global leader in whistleblower advocacy and protection. Our lawyers have represented whistleblower employees for over four decades, employees who, among other things, have exposed government and corporate illegality, waste, fraud, abuse, and serious dangers to public health and safety.

We currently represent multiple whistleblowers who have raised the alarm about health threats posed to workers, immigrants and the public by the spread of COVID-19 in ICE detention. This letter summarizes evidence provided by our clients detailing ongoing gross mismanagement, dangerous practices, and compliance failures that has exacerbated, and continues to exacerbate, the spread of COVID-19, posing imminent dangers to the health and safety of staff, detainees, their families and friends and the public.

Specifically, problems identified by whistleblowers at Richwood Correctional Center (Richwood) in Louisiana, operated by LaSalle, illustrates how mismanagement at detention centers accelerate the current public health crises. To date, whistleblowers report that at least 15 officers and 72 detainees have been infected with COVID-19, two officers have died and at least

four hospitalized detainees have been placed on ventilators. These deaths and illnesses were likely caused by LaSalle mismanagement.

The information here was provided to us by two groups of whistleblower clients: (i) DHS's own medical subject matter experts in detention health who have continued to warn DHS and Congress about ICE detention facilities being "tinder boxes" for the spread of COVID-19; and (ii) staff who are either are or were employed at Richwood from the onset of the pandemic through today.

A. Whistleblowers: DHS's Subject Matter Medical Experts on Detention Health

Government Accountability Project represents Drs. Scott Allen and Josiah "Jody" Rich, nationally recognized experts in detention health. They are physicians and subject matter experts employed by the Office of Civil Rights and Civil Liberties (CRCL) within DHS. Dr. Allen has inspected multiple immigration detention facilities across the country over the past 6 years. He also serves as the court appointed monitor overseeing medical care for jails in Riverside County, California. Dr. Rich specializes in infectious disease and public health. He has provided care at the Rhode Island Department of Corrections for decades and is currently caring for hospitalized coronavirus infected patients.

Drs. Allen and Rich began raising alarms about COVID-19 to CRCL in late February 2020 and again in mid-March. They alerted DHS leadership and others to the imminent risk to the health and safety of ICE detainees, staff and the public caused by detaining people in congregate settings like ICE and other DHS detention facilities. They wrote to Congress on March 19, 2020, and Dr. Allen testified before the Senate Judiciary Committee on June 2, 2020.

In their disclosures they reported:

- Infectious diseases, like COVID-19, spread rapidly in congregate settings.
- Transport of detainees typically occurs in congregate settings.³ As Dr. Allen told the Senate last month, "Jails, prisons, and detention facilities are not islands in fact, they

¹ Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH, Letter to Congress (March 19, 2020), available at https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf.

² Written Statement of Dr. Scott A. Allen, MD, "Examining Best Practices for Incarceration and Detention During COVID-19," Senate Judiciary Committee (June 2, 2020), available at https://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf.

³ Lisa Riordan Seville and Hannah Rappleye, "ICE keeps transferring detainees around the country, leading to COVID-19 outbreaks," *NBC News* (May 31, 2020), available at https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-around-

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."⁴

- Asymptomatic spreaders, including children, pose risks as carriers of infection, which can then spread the virus to older family members or those in other high-risk categories who may be a higher risk of serious illness.
- Social distancing, which is essential to slow the spread of the coronavirus to minimize the risk of infection and to try to reduce the number of those needing medical treatment from overwhelmed local health care providers and facilities, is an oxymoron in congregate settings. Because of the concentration of people in a close area with limited options for creating distance between detainees, workers and immigrants are at very high risk for an outbreak of infectious disease. This then creates an enormous public health risk, not only because disease can spread so quickly, but because those who contract COVID-19 with symptoms that require medical intervention will need to be treated at local hospitals, thus increasing the risk of infection to the public at large and overwhelming treatment facilities.
- Dozens of immigration detention centers are in remote areas with limited access to health care facilities. Many facilities, because of the rural locations, have only one on-site medical provider. If that provider gets sick and requires being quarantined for at least

country-leading-covid-19-outbreaks-n1212856; Monique Maden, "Coronavirus cases skyrocket at ICE detention center in Broward after transfer from Miami," *Miami Herald* (May 19, 2020), available at https://www.miamiherald.com/news/local/immigration/article242844451.html; Hamed Aleaziz, "A Local Sheriff Said No To More Immigrant Detainees Because of Coronavirus Fears. So ICE Transferred Them All To New Facilities," *BuzzFeed News*, March 18, 2020 (ICE recently transferred 170 immigrant detainees from Wisconsin to facilities in Texas and Illinois. "In order to accommodate various operational demands, ICE routinely transfers detainees within its detention network based on available resources and the needs of the agency...' an ICE official said in a statement."), available at https://www.buzzfeednews.com/article/hamedaleaziz/wisconsin-sheriff-ice-detainees-coronavirus.

⁴ U.S. Senate Judiciary Committee, "Examining Best Practices for Incarceration and Detention During COVID-19" (June 2, 2020), available at https://www.judiciary.senate.gov/download/scott-allen-testimony.

- fourteen days, the entire facility could be without any medical providers at all during a foreseeable outbreak of a rapidly infectious disease.⁵
- Even in the best circumstances, the provision of medical care in correctional and detention facilities is inconsistent and inadequate. While some do a very good job in providing care, others perform poorly.⁶

Drs. Allen and Rich made a number of recommendations to Congress:

• **Robust Testing is Essential**: For every one detainee identified and isolated using symptom-based screening, several more pass in, and eventually out of, the facility without symptoms.⁷ Testing must be done aggressively to isolate infected individuals, monitor them and break the chain of transmission as early as possible.⁸

⁵ Data from the COVID Prison Project shows that prison populations test substantially higher than the general population in many states. *See* Erin McCauley, "COVID-19 Case Watch May 27, 2020," *COVID Prison Project Blog* (May 30, 2020), available at https://covidprisonproject.com/blog. Similarly, a new study in the Journal of Urban Health shows that optimistically, 72% of individuals in ICE detention are expected to be infected by day 90, with nearly 100% infected under more pessimistic conditions; the study further shows that COVID-19 outbreaks among a minimum of 58 ICE facilities (52%) would overwhelm ICU beds within a 10-mile radius. "Modeling COVID-19 and Its Impacts on U.S. Immigration and Customs Enforcement (ICE) Detention Facilities, 2020," *J. Urban Health* (2020), available at https://doi.org/10.1007/s11524-020-00441-x.

⁶ See, e.g., Department of Homeland Security Office of Inspector General (DHS OIG), "Concerns about ICE Detainee Treatment and Care at Four Detention Facilities" (June 3, 2019), available at https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf; DHS OIG, "Concerns about ICE Detainee Treatment and Care at Detention Facilities" (December 11, 2017), available at https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf; Department of Justice Office of the Inspector General (DOJ OIG), "Review of the Federal Bureau of Prisons' Medical Staffing Challenges" (March 2016), available at https://oig.justice.gov/reports/2016/e1602.pdf.

⁷ Lisa Riordan Seville and Hannah Rappleye, "ICE keeps transferring detainees around the country, leading to COVID-19 outbreaks," *NBC News* (May 31, 2020), available at https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-around-country-leading-covid-19-outbreaks-n1212856; Gandhi M, Yokoe D, Havlir D., "Asymptomatic transmission, the Achille's heel of current strategies to control Covid-19," New England Journal of Medicine (April 24, 2020), available at https://www.nejm.org/doi/full/10.1056/NEJMe2009758

• Significant Reduction of Populations in Detention is Both Possible and Necessary to Protect the Public Health: Populations must drop to create space for distancing and separation. Because all those in immigration detention are civil, not criminal, detainees, and because ICE has complete discretion to control the size of that population, where detention is associated with greater risk of harm due to outbreak and spread of the virus within the facility and to the community, the detention of civil detainees who represent low to no risk of criminality simply cannot be justified. This is particularly true of continuing to hold children in immigration detention, a practice which already carries high risk of serious harm to their long term physical and mental health, risks which are only heightened by COVID-19.

⁸ Donald Kerwin, "Immigrant Detention and COVID-19:How the US Detention System Became a Vector for the Spread of the Pandemic," *Center for Migration Studies of New York* (June 16, 2020), available at https://cmsny.org/publications/immigrant-detention-covid/ ("Overall, a very low percentage of those in ICE's custody during the pandemic have been tested. A very high percentage of those tested — 51 percent by May 27 and 28 percent by June 12 — had tested positive...If ICE tested earlier and more extensively, it would have "confirmed" and faced additional pressure to respond to the many more infected persons in its custody.")

⁹ ICE, "Immigration Enforcement, Detention Management, Overview" (last visited July 9, 2020), available at https://www.ice.gov/detention-management.

¹⁰ Release of immigrants from detention to control the coronavirus outbreak has been recommended by John Sandweg, former acting head of ICE during the Obama administration, who further noted, "The overwhelming majority of people in ICE detention don't pose a threat to public safety and are not an unmanageable flight risk...Unlike the Federal Bureau of Prisons, ICE has complete control over the release of individuals. ICE is not carrying out the sentence imposed by a federal judge...It has 100% discretion." Camilo Montoya-Galvez, "'Powder kegs': Calls grow for ICE to release immigrants to avoid coronavirus outbreak," *CBS News* (March 19, 2020), available at https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak.

¹¹ Keller A, Wagner B. "COVID-19 and immigration detention in the USA: Time to Act," *The Lancet Public Health* (March 31, 2020). Available at https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30081-5/fulltext

¹² Letter to Senators Grassley and Wyden from Drs. Allen and McPherson (July 17, 2018), available at 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), available at https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html; Letter from Fourteen Medical Professional Associations to House Judiciary Committee, House Energy and Commerce Committee, House Homeland Security Committee, and House Appropriations

• Data Collection and Data Sharing is Critical, and Currently Inadequate: To date, correctional and detention facilities have largely been omitted from national, state and local COVID response plans, with no correctional health experts appointed to the White House Coronavirus Task Force, ¹³ and different states issuing reopening guidelines that fail to account for often dramatically disproportionate infection rates in prisons and detention facilities. ¹⁴ Further, data collection and sharing is inconsistent and frequently nontransparent, making assessments of the spread of COVID-19 difficult and likely underestimated. ¹⁵ Data should be freely shared back and forth between facilities and public health authorities in real time to best support effective containment efforts. Because infection can spread both ways—from facility to community and from community to facility—both intake screening, release planning and release execution needs to accommodate COVID-19 containment strategies developed through collaboration between ICE, correctional and detention facilities, public health authorities, correctional health professionals, and post-release service providers.

Drs. Allen's and Rich's warnings to Congress on March 19, 2020 and Dr. Allen's more recent written testimony to the Senate Judiciary Committee on June 2, 2020 highlight several important points:

Committee (July 24, 2018), available at https://www.acponline.org/acp_policy/letters/letter_house_oversight_request_on_child_detention_centers_2018.pdf

¹³ Abby Goodnough, "Who's on the U.S. Coronavirus Task Force, "*New York Times* (Feb. 29, 2020), available at https://www.nytimes.com/2020/02/29/health/Trump-coronavirus-taskforce.html; The White House, "New Members of the White House Coronavirus Task Force Announced," *White House Statements and Releases* (May 15, 2020), available at https://www.whitehouse.gov/briefings-statements/new-members-white-house-coronavirus-taskforce-announced/

¹⁴ See, e.g., Abbie Vansickle, "How To Hide a COVID-19 Hotspot? Pretend Prisoners Don't Exist," *The Marshall Project* (May 27, 2020), available at https://www.themarshallproject.org/2020/05/27/how-to-hide-a-covid-19-hotspot-pretend-prisoners-don-t-exist.

¹⁵ Eunice Cho, "ICE's Lack of Transparency About COVID-19 in Detention Will Cost Lives," *ACLU News & Commentary* (last visited May 31, 2020), available at https://www.aclu.org/news/immigrants-rights/ices-lack-of-transparency-about-covid-19-in-detention-will-cost-lives/.

- 1) DHS had knowledge from its own medical experts in detention health since at least late February 2020, and more widely since March 20, 2020, ¹⁶ that immigration detention facilities posed a **uniquely high risk of spread of COVID-19** to workers, immigrants and the public;
- 2) The congregate nature of immigrant detention makes compliance with detention standards related to medical care and CDC guidelines both critical and difficult. Social distancing, adequate Personal Protective Equipment (PPE), frequent handwashing, and sanitizing the frequently shared surfaces of dorms, door handles, and other common areas are uniquely challenging in detention settings, which is why other settings, like schools and nursing homes, have focused on closures and/or population reduction;
- 3) The steady rotation of ICE and contractor staff for work shifts, and frequent transfers of immigrant detainees between facilities and for deportation through airports, dramatically exacerbates the spread of COVID-19;
- 4) Failures to adequately test and report infections of both detainees and all ICE and ICE-contractor staff puts worker, detainee and the public's health at greater risk.

B. Whistleblowers: Richwood Staff

Reports from whistleblowers we represent, who are current or former detention officers at Richwood, further corroborate the concerns voiced by Drs. Allen and Rich.

The federal whistleblower laws, specifically 41 U.S.C. § 4712, protect employees of federal contractors, like LaSalle, who make protected disclosures of misconduct, gross mismanagement, abuses of authority, and specific dangers to public health and safety. Our clients, who wish to remain anonymous, have already made, or expect to make such disclosures to DHS OIG. They have also reported their concerns to LaSalle management.

The disclosures include:

Lasalle Has Concealed the Nature and Extent of COVID-19

Whistleblowers currently believe at least 15 officers and 72 detainees are or have been sick with COVID-19. Two officers died in April. Detainees are or have been on ventilators. LaSalle management has not disclosed or acknowledged the deaths. As a result, morale has and is suffering, and staff fear they are at risk of contracting COVID-19.

¹⁶ Catherine Shoichet, "Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention," *CNN* (March 20, 2020), available at https://www.cnn.com/2020/03/20/health/doctorsice-detention-coronavirus/index.html

LaSalle Is Not Following COVID-19 Guidance

ICE has issued guidance for its operations on COVID-19.¹⁷ CDC has done the same, specifically focused on detention and correctional facilities.¹⁸ They call for the use of personal protective equipment (PPE), including facemasks, by staff.

Our clients report that the guidance has not been followed. For example, on March 11, 2020, the Governor of Louisiana declared a public health emergency due to COVID-19.¹⁹ However, Richwood management prohibited staff from wearing face masks until the week of April 8, 2020. By that time, several detainees and staff were infected with COVID-19.

Similarly, two days after the Governor's declaration, Richwood's Health Service Administrator held a staff meeting, where he said COVID-19 was not a big deal, erroneously it was no worse than the flu. Moreover, he said that that employees who had not bothered to get flu shots now had no right to complain about the need for extra COVID-19 precautions.

The CDC guidelines also state that staff should be able to stay home if they are sick and where possible they should be allowed to work from home. The guidelines provide that staff who are at higher risk of contracting COVID-19 be should have their duties revised to reduce that risk.

But LaSalle has in place at Richwood policies and procedures which effectively contravene CDC guidance. For instance, sick and at-risk staff were not allowed to use their personal leave in order stay away from the facility for their own protection. Staff suspected of suffering from COVID-19 who had been tested were required to report for work until such time as they tested positive tests, notwithstanding the known high unreliability of the tests. Staff who did not show up for work because of fear of COVID-19 infection were not paid.

¹⁷ "ICE Guidance on COVID-19," available at https://www.ice.gov/coronavirus. In addition, ICE detention facilities are bound to follow the Performance Based National Detention Standards (PBNDS), which state that "Centers for Disease Control and Prevention (CDC) guidelines for the prevention and control of infectious and communicable diseases shall be followed." Immigration and Customs Enforcement, PBNDS 2011, Medical Care, Section 4.3, available at https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf.

¹⁸ CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (March 23, 2020), available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf.

¹⁹ Available at https://gov.louisiana.gov/assets/ExecutiveOrders/25-JBE-2020-COVID-19.pdf.

Mismanagement Has Produced an Unsafe Work Environment

Our clients report inadequate sanitation supplies and PPE at Richwood, which they believe has caused staff to get sick. They feel unsafe at work.

The situation is as bad if not worse for detainees. Our clients report that mask use was not being required around COVID positive detainees. The situation led to detainees threatening a hunger strike because the officers were not wearing masks.

Staff Shortages and Retaliation

COVID-19 illnesses have caused an ongoing staff shortage that requires staff to work 12 hours per day, 7 days per week, with no time off. Such an exhausting schedule necessarily increases the risk of accidents and other serious incidents putting staff, detainees and the public at further risk.

Our clients have also reported they suffered retaliation after raising health and safety concerns with Richwood management. They have been fired or have been forced to quit. At least 10 staff were fired under the guise of not passing a new background check.

Improper Mixing of Sick and Healthy Detainees

Our clients report that sick and healthy detainees have been held together in a variety of communal settings, including during frequent transport. Practices and procedures have made the situation worse. For instance, Richwood drivers were reprimanded for wearing PPE and cleaning their vehicles. Whistleblowers also reported that COVID-19 positive and symptomatic detainees are transported with asymptomatic staff and detainees, and that small vehicles rather than larger buses are often used to transport detainees.

Deporting Infected Detainees

According to one whistleblower, detainees who tested positive for COVID-19 were deported by plane and LaSalle transported them to the Alexandria Staging Facility (ASF) in the same vehicle as healthy detainees. A whistleblower said that when the airline complained, Warden DeBellevue justified the risk by alleging that the infected patient's test results were a "false positive." ICE reported on their website that ICE Air brought US citizens and residents back to the United States during the outbreak on the same aircraft used to deport immigrants.²⁰

²⁰ As of April 10, 2020, ICE Air flew over 1,000 US citizens home amid the pandemic on the return leg of removal flights. https://www.ice.gov/news/releases/ice-air-has-flown-over-1000-us-citizens-home-amid-covid-19-pandemic

Although ICE has a policy to screen deportees for temperature checks, a whistleblower reports that the temperature gauges used were inaccurate and that LaSalle staff were ordered to turn on the air conditioning to maximum to "freeze them out" so the detainees will not be refused for deportations. LaSalle and Richwood medical ordered a whistleblower to write down a made-up temperature on the medical transfer summary. A whistleblower reports that some deportees had a temperature of 102 degrees Fahrenheit and the demand to manipulate the temperature reading by "freezing them out" lowered it to 98.6 degrees so they could travel (internal temperatures were not taken; temperatures were taken from the foreheads of the deportees).

Finally, COVID-19 detainees have also been improperly housed in the same building assigned to detainees suffering from tuberculosis. We have been informed that while COVID-19 detainees were quarantined in a separate building in Richwood, detainees with tuberculosis were placed in the same setting (some had been misdiagnosed as COVID-19), creating a potential disease bomb where detainees could potentially contract two extremely dangerous diseases. CDC Guidelines are clear: COVID-19 cases should be placed isolated in a separate environment from other individuals and cohorting, and should only be practiced if there are no other available options. Applicable detention standards further specify that detainees with tuberculosis are also to be kept in isolation. We have been informed LaSalle had other available options.

Detainees Were Not Adequately Tested

According to CDC guidelines, after being infected with COVID-19, individuals should test negative in two consecutive respiratory specimens collected at least 24 hours apart, of if they are not tested, they must be free from fever for 72 hours without fever-reducing medication and have improved symptoms before they can return from medical isolation.

According to our clients, nurses said the detainees were never retested before they were returned back to the dorms after testing positive. They were simply sent back to the dorms after 14 days and never retested. At least three detainees tested negative, returned to Richwood no longer in isolation, and then returned to the hospital because they still had COVID and they ended up in the intensive care unit at the hospital.

Sanitary Guidelines Not Followed

CDC Guidelines for detention facilities require surfaces to be disinfected—especially in common areas – several times each day.²¹ We have been informed that this practice is not being followed.

According to a whistleblower, the dorms were only sanitized once a day "if they had time," though dorms were required to be cleaned every three hours or four times per shift. Concerns were raised to Warden DeBellevue about the lack of cleaning of the common areas; there was no

²¹ CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (March 23, 2020), available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf.

response from the Warden. A week later the safety officer issued a cleaning schedule, but reported to one of the whistleblowers that he couldn't get the officers or the trustees to clean after implementing the schedule.²²

We appreciate the oversight the House Committee on Homeland Security's Subcommittee on Border Security, Facilitation & Operations is conducting on this issue at its upcoming July 13, 2020 hearing, *Oversight of ICE Detention Facilities: Examining ICE Contractors' Response to COVID-19*, and hope that our clients' whistleblower disclosures support urgent efforts needed to address the ongoing and imminent dangers to worker, immigrant and public safety posed by the spread of the coronavirus in ICE detention.

For more information contact Samantha Feinstein at samanthaf@whistleblower.org, John Whitty at johnw@whistleblower.org, or Dana Gold at danag@whistleblower.org, or by phone at (202) 457-0034.

Thank you.

Very truly yours,

GOVERNMENT ACCOUNTABILITY PROJECT

Samantha Feinstein, Staff Attorney Dana L. Gold, Senior Counsel John Whitty, Staff Attorney

²² Trustees are prisoners with a criminal record who, on good behavior, are allowed to work. They were responsible for cleaning the facilities and for serving food to the detainees. It's worth noting that approximately three trustees who were serving food to immigrant detainees tested positive for COVID-19 and then were removed from the food service duties and then quarantined. LaSalle officers were asked to serve food to detainees after that.