



VIA EMAIL

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

The Honorable Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536
January 26, 2022

Re: Whistleblower Disclosure from DHS Medical Experts on Continuing Health and Safety Risks to Immigrants, Workers, and the Public from Current COVID-19 Measures and Practices in Immigration Detention Settings

Dear Secretary Mayorkas and Acting Director Johnson:

Please find below a written whistleblower disclosure from our clients, Drs. Scott A. Allen and Josiah "Jody" Rich, physicians who currently serve as contracted medical subject matter experts in detention health for the Department of Homeland Security's Office for Civil Rights and Civil Liberties (DHS CRCL). In the disclosure, they detail their ongoing concern about current measures and practices in immigration detention settings that fail to adequately protect against the spread of COVID-19 in immigration detention settings.

Among other recommendations, Drs. Allen and Rich are urging DHS to provide COVID booster vaccinations to detainees. Booster vaccinations are now the standard and are a top priority of the federal government's response to present and future COVID threats. Current CDC guidance calls for booster vaccinations with an mRNA vaccine such as Pfizer or Moderna two months after the J&J vaccine, as well as six months after a second mRNA vaccine.¹ DHS does not appear to have adopted this approach even in the face of the high, well-documented risks associated with detention settings. DHS's current version of the ERO Pandemic Response Requirements does not include recommendations for boosters.²

¹ Centers for Disease Control and Prevention (CDC), "COVID-19 Vaccine Booster Shots," (Updated January 7, 2022), https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html?s_cid=11706:cdc%20covid%20booster%20shot%20guidelines:sem.ga:p:RG:GM:gen:PTN:FY22

² U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) COVID-19 Pandemic Response Requirements, (October 19, 2021), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

As they note in the letter below, Drs. Allen and Rich have both observed and documented in the course of their investigations for CRCL “inconsistent enforcement of mask use in detention centers, inconsistent testing and surveillance, and a failure to develop facility level infection control plans— all critical measures to control the spread of what we know is a highly transmissible, life-threatening illness.” These weaknesses in protective measures used to address the spread of COVID are further exacerbated by the failure to provide immediate and site-wide access to vaccinations and boosters.

Drs. Allen and Rich began raising concerns about the risk to immigrants, workers and the public from the spread of the coronavirus in the early stages of the pandemic, first in the past administration to CRCL leadership and then to Congress in February and March 2020.³ They renewed their concerns in the current administration to CRCL leadership in February 2021, to the White House Coronavirus Response Team and the COVID-19 Health Equity Task Force in March 2021, and again to Congress in June 2021.⁴

The consequences of DHS’s current practices reflect gross mismanagement in their continuing disregard of not only the warnings and recommendations of its own medical experts, but that of the Centers for Disease Control and Prevention. They also create substantial and specific dangers to the health and public safety of immigrant detainees, workers, and the public from the spread of a highly transmissible, life-threatening virus which will likely continue to mutate into other strains.

We ardently hope that the Department will heed the warnings and recommendations offered by Drs. Allen and Rich in the enclosed letter based on their medical expertise without further delay given the high stakes in question. As always, our clients are happy to provide any clarification or additional information for the Department's consideration and stand ready to support its efforts to reduce the risk of further spread of COVID-19 in immigration detention.

Sincerely,



Dana L. Gold
Senior Counsel, Government Accountability Project
Counsel for Dr. Scott A. Allen and Dr. Josiah “Jody” Rich

³ Protected whistleblowing disclosure to Congress, Drs. Scott A. Allen and Josiah "Jody" Rich, March 19, 2020, <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>.

⁴ Scott A. Allen, MD, FACP, Pamela McPherson, MD, and Josiah Rich, Letter to Congress (June 25, 2021), <https://whistleblower.org/wp-content/uploads/2021/06/062521-Ltr-to-Congress-fr-Allen-McPherson-Rich-FINAL-for-Dist.pdf>

January 26, 2022

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

The Honorable Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

Re: Boosters, Other Measures Needed to Protect Workers, Immigrants and the Public From COVID-19 in Immigration Detention Settings

Dear Secretary Mayorkas and Acting Director Johnson:

We are physicians (an internist and an infectious disease specialist) with expertise in medical care in detention settings.¹ We currently serve as subject matter experts for the Department of Homeland Security's Office for Civil Rights and Civil Liberties (DHS CRCL) and have conducted numerous investigations of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) immigration detention facilities on CRCL's behalf over the past seven years.

¹I, 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 of the Center for Prisoner Health and Human Rights at Brown University, now the *Center for Health and Justice Transformation*, 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. Josiah (Jody) Rich, MD, MPH, am a Professor of Medicine and Epidemiology at The Warren Alpert Medical School of Brown University, and a practicing Infectious Disease Specialist since 1994 at The Miriam and Rhode Island Hospitals, providing clinical care at the Rhode Island Department of Corrections caring for people who are incarcerated and working in the correctional setting doing research. I have published over 200 peer-reviewed publications, predominantly in the overlap between infectious diseases, addictions and incarceration. I am the Director and Co-founder of The Center for Prisoner Health and Human Rights at The Miriam Hospital (now the *Center for Health and Justice Transformation* (www.healthandjustice.org)). My primary field and area of specialization and expertise is in the overlap between infectious diseases and illicit substance use, the treatment and prevention of HIV infection, and the care and prevention of disease in addicted and incarcerated individuals. I am an elected member of the *National Academy of Medicine*.

We have warned of the threat of COVID-19 within ICE and CBP detention facilities as a serious source of risk to not only immigrants and workers, but also the public, since the early days of the pandemic, and have continued to do so under both the former and current administrations. We began raising concerns and making recommendations about the need for testing, population reductions, the limiting of interfacility transfers, and provision of proper PPE internally beginning in February 2020,² and then more publicly escalated and expanded our recommendations to include vaccine distribution and administration to Congress³ and to the press.⁴

We have continued to raise the alarm about the need to contain the spread of COVID in immigration detention as recently as this month because while ICE, CBP and DHS have implemented a number of the recommended strategies, they have often been slow and inconsistent in their efforts to rapidly deploy effective measures in limiting the spread of COVID-19 in the facilities and the surrounding communities. In our own inspections of ICE facilities, for example, we have seen and documented inconsistent enforcement of mask use in detention centers, inconsistent testing and surveillance, and a failure to develop facility level infection control plans—all critical measures to control the spread of what we know is a highly transmissible, life-threatening illness. These findings are consistent with multiple investigations by DHS’s Office of the Inspector General.⁵

We have also observed a failure to take full advantage of one of the most effective tools to slow viral spread: vaccination and boosters.

² 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>

³ 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>; Scott A. Allen, MD, FACP, Pamela McPherson, MD, and Josiah Rich, Letter to Congress (June 25, 2021), <https://whistleblower.org/wp-content/uploads/2021/06/062521-Ltr-to-Congress-fr-Allen-McPherson-Rich-FINAL-for-Dist.pdf>

⁴ Catherine Shoichet, “Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE detention, CNN (March 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>; Scott A. Allen and Josiah D. Rich, “When will the government apply its vaccine effort to migrants in ICE detention?,” *The Hill* (August 8, 2021), <https://thehill.com/opinion/healthcare/566608-when-will-the-government-apply-its-vaccine-effort-to-migrants-in-ice>; see also Camilo Montoya-Galvez, “Coronavirus infections inside U.S. immigration detention centers surge by 520% in 2022,” *CBS News* (January 14, 2022), <https://www.cbsnews.com/news/immigration-detention-covid-cases-surge/>.

⁵ See DHS Office of Inspector General (OIG), “Violations of ICE Detention Standards at Otay Mesa Detention Center,” (September 14, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-61-Sep21.pdf>; see also DHS Office of Inspector General (OIG), “DHS Needs to Enhance Its COVID-19 Response at the Southwest Border,” (September 10, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-60-Sep21.pdf>; see also DHS Office of Inspector General (OIG), “ICE’s Management of COVID-19 in Its Detention Facilities Provides Lessons Learned for Future Pandemic,” (September 7, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>.

Letter from Drs. S. Allen and J. Rich to Sec’y Mayorkas Re: Boosters, Other Measures Needed to Protect Immigrants, Workers, and the Public from COVID-19 in Immigration Detention Settings

January 26, 2022

Page 2 of 5

DHS has offered vaccination to detainees with the single-dose Johnson and Johnson (J&J) vaccine, an approach that at one time was appropriate. More recently, however, the world and the U.S. has faced the challenge of a rapidly transmissible version of COVID, the Omicron variant. The single dose J&J vaccine—and indeed even the two-dose Moderna and Pfizer vaccines—are no longer considered to provide adequate protection against Omicron.⁶ It is prudent to consider the likelihood that Omicron will be followed by other variants and that COVID poses an ongoing threat, particularly in congregate settings.

Booster vaccinations are now the standard and are a top priority of the federal government's response to present and future COVID threats. Current CDC guidance calls for booster vaccinations with an mRNA vaccine such as Pfizer or Moderna two months after the J&J vaccine, as well as six months after a second mRNA vaccine.⁷

DHS does not appear to have adopted this approach even in the face of the high, well-documented risks associated with detention settings. DHS's current version of the ERO Pandemic Response Requirements does not include recommendations for boosters.⁸

In contrast, the Federal Bureau of Prisons (FBOP) guidelines for COVID issued at roughly the same time do include recommendations for booster vaccinations.⁹

While many detainees in DHS custody are released before a booster is appropriate, many remain in detention for weeks, months or more. Providing booster vaccinations to detainees who have been partially vaccinated in the community is also a good public health measure for detainees who are detained for short periods. The threat of Omicron in a congregate setting with populations who are either unvaccinated or only vaccinated with a single dose of J&J vaccine poses an immediate threat to the lives of immigrants, staff and communities surrounding the detention centers with staff and detainees entering and exiting facilities and must be addressed with booster vaccinations. While some studies have demonstrated that Omicron may be less

⁶ Lena H. Sun, Joel Achenbach, Dan Keating, "Booster shots in U.S. have strongly protected against severe disease from omicron variant, CDC studies show," *The Washington Post* (January 21, 2022),

<https://www.washingtonpost.com/health/2022/01/21/cdc-studies-booster-shots-omicron/>; Wilfredo F. Garcia-Beltran, Kerri J. St. Denis *et al.*, "mRNA-based COVID-19 vaccine boosters induce neutralizing immunity against SARS-CoV-2 Omicron variant," *Cell* (December 23, 2021), <https://doi.org/10.1016/j.cell.2021.12.033>

⁷ See Centers for Disease Control and Prevention (CDC), "COVID-19 Vaccine Booster Shots," (Updated January 7, 2022), https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html?s_cid=11706:cdc%20covid%20booster%20shot%20guidelines;sem.ga:p:RG:GM:gen:PTN:FY22.

⁸ See U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) COVID-19 Pandemic Response Requirements, (October 19, 2021), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

⁹ See Bureau of Prisons, "COVID-19 Vaccine Guidance, Federal Bureau of Prisons Clinical Guidance," (October 13, 2021), https://www.bop.gov/resources/pdfs/covid_19_vaccine_guidance_v14_0_2021.pdf.

Letter from Drs. S. Allen and J. Rich to Sec'y Mayorkas Re: Boosters, Other Measures Needed to Protect Immigrants, Workers, and the Public from COVID-19 in Immigration Detention Settings

January 26, 2022

Page 3 of 5

likely to lead to severe illness, research has also shown that the Omicron virus is more likely to evade protections created by vaccination, highlighting the critical role of boosters.¹⁰

Vaccination in high-risk settings is most effective when rates of vaccine uptake in the population are high. Accordingly, DHS must make every effort to not only provide immediate and easy access to vaccine and boosters in all immigration detention settings, but to also provide ongoing education and counseling to detainees and staff to address lingering confusion and questions regarding the safety and efficacy of vaccinations and boosters. Further, health care staff and custody staff working in the healthcare settings should comply with federal vaccination requirements for healthcare workers.

COVID has presented a most daunting challenge, especially in high-risk congregate settings such as immigration detention. But ICE's failure to implement a plan for providing boosters to detained immigrants is inexplicable in light of available science, government public health recommendations, and their widespread availability. The failure to act with alacrity has contributed to the number of confirmed COVID cases skyrocketing since the emergence of the Omicron variant.¹¹

The government has an affirmative duty to take all reasonable actions to protect the health and safety of those it detains, as well as to protect the health and safety of staff, their families and the surrounding community. To that end, we urgently recommend that DHS rapidly move to correct deficits in their current COVID mitigation efforts by implementing the following recommendations:

- 1) The federal government should provide booster vaccinations (mRNA vaccines, either Pfizer or Moderna) directly to immigrant detainees and staff in all detention facilities immediately. The provision of vaccination must be accompanied by an effective education and counseling effort to allow for informed consent and to overcome misinformation and confusion regarding the safety and efficacy of vaccinations.
- 2) DHS should ensure that detainees have reasonable access to approved medications for the treatment of COVID, including but not limited to approved antiviral medications (such as Paxlovid and Molnupiravir) and monoclonal antibodies (monoclonal antibodies are not as effective with Omicron but have proven to be effective with other variants).

¹⁰ See, e.g., fn. 6.

¹¹ Camilo Montoya-Galvez, "Coronavirus infections inside U.S. immigration detention centers surge by 520% in 2022," *CBS News* (January 14, 2022), <https://www.cbsnews.com/news/immigration-detention-covid-cases-surge/> ("On [January 13, 2022], 1,766 immigrants were being monitored or isolated at ICE detention facilities due to confirmed coronavirus infections, a more than sixfold jump from January 3, when there were 285 active cases, [government statistics](#) show. The number of detainees with active COVID-19 cases represents 8% of the 22,000 immigrants ICE is currently holding in its network of 200 detention centers, county jails and for-profit prisons.").

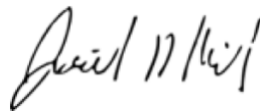
- 3) ICE detention facilities must develop local pandemic response plans in keeping with the ICE Pandemic Response Requirements and designate facility level infection control health care personnel to monitor infection control efforts.
- 4) Basic hygiene practices must be required in all detention facilities including the regular provision of effective PPE such as N95 or KN95 masks to detainees and staff.

In June 2021, warning Congress about the inadequate steps DHS had taken over more than 15 months to protect against the spread of COVID, we stated that “we continue to urge that DHS develop a comprehensive COVID plan for detention and that the White House Coronavirus Response Team and CDC provide support for this objective. Such a plan should create detailed standards and guidance that maximize standard infection control practices (hygiene and PPE), reduction in transfers between facilities, decreased populations to allow for social distancing, optimal testing strategies, and early and aggressive vaccination efforts.”¹² We once again, now nearly 23 months since the beginning of the pandemic, renew our appeal to implement these same recommendations, in addition to the measures enumerated above, as vital to the public health response to this life-threatening illness.

We will continue to work closely with our colleagues at CRCL, ICE and CBP to support their COVID containment efforts, and are available to you and your staff for further consultation.



Scott A. Allen, MD



Josiah D. Rich, MD

Cc: Ms. Katherine Culliton-Gonzalez, Officer, Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security

¹² Scott A. Allen, MD, FACP, Pamela McPherson, MD, and Josiah Rich, Letter to Congress (June 25, 2021), <https://whistleblower.org/wp-content/uploads/2021/06/062521-Ltr-to-Congress-fr-Allen-McPherson-Rich-FINAL-for-Dist.pdf>