

Working with Whistleblowers

July 15, 2020



GOVERNMENT
ACCOUNTABILITY
PROJECT

Panelists

- Dana Gold, Senior Counsel & Director of Education, Government Accountability Project
- David Seide, Senior Counsel, Government Accountability Project
- Moderator: R. Andrew Free, Federal Civil Litigator; #DetentionKills Network

Today's Program

- About the Government Accountability Project
- Our Methodology & History
- Our Work with Immigration Whistleblowers
- Intro to Whistleblower Law
- Best Practices for Working with Whistleblowers
- Resources



Government Accountability Project

We are the leading whistleblower protection and advocacy organization, having assisted over 8,000 whistleblowers since 1977.

We help whistleblowers hold government AND corporate institutions accountable by:

- Presenting their verified concerns to public officials, advocacy groups and journalists;
- Seeking justice when they risk or suffer reprisal; and
- Advancing legal reforms to expand whistleblower protections.



Most Employees Stay Silent.

Fear of Reprisal & Fear of Futility



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Our Methodology

Working with Whistleblowers Protecting the Person & Promoting Reform



Media Outreach

Legal Protection
&
Support

Partners, Allies &
Coalitions

Investigations

Congressional
&
Agency Oversight

Public Education



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Our History



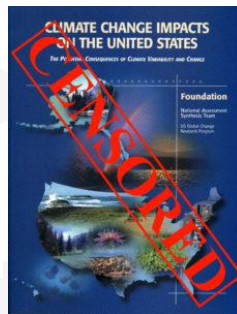
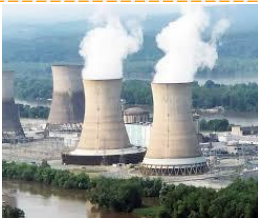
Daniel Ellsberg



Ernie Fitzgerald



Issue Areas



Our Work with Immigration Whistleblowers



nbc NEWS

Private firms that run ICE detention centers promise Congress they'll work to stop COVID-19 spread

SHARE THIS —

Private firms that run ICE detention centers promise Congress they'll work to stop COVID-19 spread

Two whistleblowers from a Louisiana facility gave Congress a letter saying management hadn't done enough to protect staff or detainees from COVID-19.

July 13, 2020, 6:11 PM EDT

By Julia Ainsley



Immigration



Antar Davidson,
Southwest Key employee

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ZERO TOLERANCE **Watch as 6-Year-Old Salvadoran Girl From Audio Recording Is Reunited With Mother**

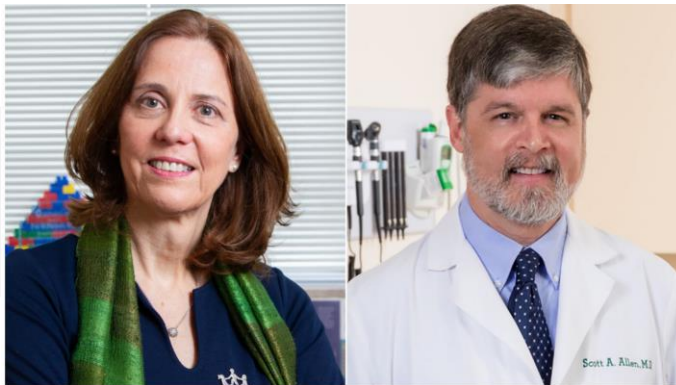
"I'll be the happiest woman in the world," said Jimena's mother, Cindy Madrid, as she prepared for the moment. "It's been very painful to be apart."

by Ginger Thompson,
July 13, 10:08 a.m. EDT



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Immigrant Child Detention



Drs. Pamela McPherson & Scott Allen

U.S. Department of Homeland Security, Office of
Civil Rights & Civil Liberties



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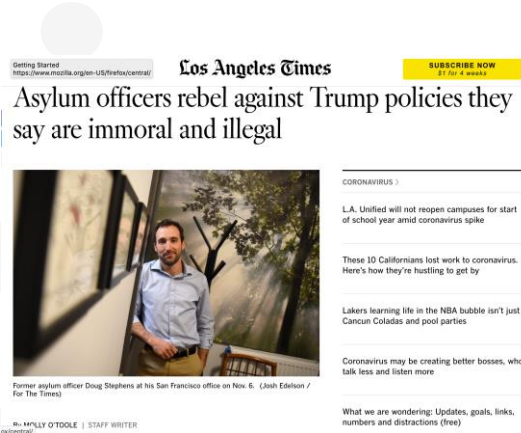
Solitary Confinement in ICE Detention



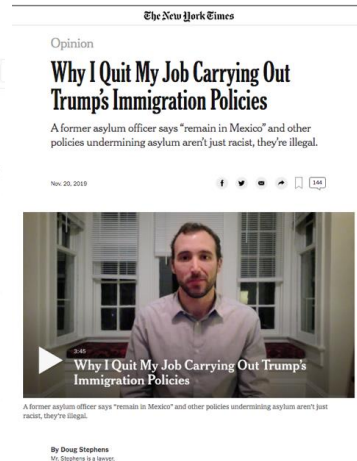
Ellen Gallagher, DHS whistleblower



MPP/Remain in Mexico



Douglas Stephens, USCIS



COVID-19 & ICE Detention

Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention



By Catherine E. Shoichet, CNN
Updated 8:21 PM ET, Fri March 20, 2020



More from CNN

Nicole Theriault, 24-year-old YouTube star, dies unborn...

Amanda Kloots shares about the private life for late...



Drs. Scott Allen & Josiah "Jody" Rich, CRCL/DHS subject matter experts



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July 17, 2018

The Honorable Charles E. Grassley
Chairman
Senate Whistleblowing Caucus
226 Dirksen Senate Office Building,
Washington, D.C. 20002

The Honorable Ron Wyden
Vice Chairman
Senate Whistleblowing Caucus
221 Dirksen Senate Office Building
Washington, DC 20002

Dear Chairman Grassley and Vice Chairman Wyden:

We currently serve as medical and psychiatric subject matter experts for the Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL).¹ We are writing to you, members of Congress with oversight responsibility, because we have a duty to raise our concern about the ongoing and future threat of harm to children posed by the current and proposed expansion of the family detention program.



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The New York Times

**“Whistle-Blowers
Say Detaining
Migrant Families
‘Poses High Risk of
Harm’”**

July 19, 2018



**60 Minutes, “The Chaos Behind Donald Trump’s
Policy of Family Separation the the Border,”
CBS (November 26, 2018)**





February 28, 2019

Via Electronic Mail

Ms. Cameron Quinn
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, D.C. 20528

Mr. John V. Kelly
Acting Inspector General
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Ms. Quinn and Mr. Kelly:

We write to bring your attention to an alarming increase in the number of infants being held in Immigration and Customs Enforcement (ICE) custody. As of today, there are at least nine infants under one year of age detained in the South Texas Family Residential Center (STFRC) in Dilley, Texas, at least one of whom has been detained for more than 20 days.¹ We write to demand the simultaneous release of these infants and their mothers as authorized by the regulations at 8 C.F.R. § 1236.3(b)(2), 8 C.F.R. § 212.5(b) and 8 C.F.R. § 235.3(b)(2)(iii). ICE is required to meet basic standards of care for minor non-citizens in its custody.² It repeatedly has demonstrated an inability to do so.

We have grave concerns about the lack of specialized medical care available in Dilley for this vulnerable population. Advocacy groups have long documented the limited access to adequate medical care in family detention centers including the STFRC.³ Concerns include lengthy delays in receiving medical attention

VICE NEWS

There's only 1 baby left at the largest family detention center in U.S., ICE says

Last year, 21-month-old Marilee Juárez died of a respiratory infection shortly after leaving the Dilley detention center.

By Rex Sauter

Mar 5 2019, 11:20am



THE RIDENHOUR PRIZES

Fostering the spirit of courage and truth



Whistleblower Laws



5 U.S.C. § 2302(b)

Prohibits retaliation against an employee who makes a protected disclosure to:

- U.S. Office of Special Counsel (OSC)
- Agency's Office of Inspector General (OIG)
- Office Designated to Receive Such Disclosures
- Agency Management
- Congress

Only enforced through OSC/MSPB



5 U.S.C. § 2302(b)



Federal Contractor Employee Protections

41 U.S.C. § 4712

- Similar to federal employee whistleblower protections
- Protected disclosures **do not** include scientific censorship
- Complaints are filed with Agency OIG
- **Claims may be removed to Federal District Court**

41 U.S.C. § 4712



Key Legal Points

- **Reasonable Belief Standard.** Employee must only reasonably believe that the concern is true. Proof of accuracy is **NOT** required.
- **Motive Doesn't Matter** (Except for Witness Credibility)
- **Do Not** need to go through Agency chain of command
- **Disputes with *policies* are NOT protected**, but disclosures concerned about the ***consequences of policies ARE***

Additional Whistleblower Laws

Anti-Fraud Laws (Retaliation & Bounty)

False Claims Act (31 U.S.C. §§ 3729 – 3733)

- Fraud on the government: bounty & anti-reprisal provisions
- E.g., falsified expiration dates, failure to perform required testing, failure to record illegal discharges of hazardous waste; sale of recalled or defective products
- 15%-30% of fraud recovered for prevailing relator
- Private right of action if DoJ declines to intervene

Dodd Frank (15 U.S.C. § 78u-6)

- Prohibits retaliation against whistleblowers – anyone who provides to the SEC information relating to a violation of the securities laws
- Established SEC Office of the Whistleblower
- No private right of action



Whistleblower Laws, cont.

Anti-Fraud Laws, cont. (Retaliation Only)

Sarbanes Oxley (18 U.S.C. § 1514A)

- Prohibits retaliation against an employee who discloses information reasonably believed to be violations of federal antifraud statutes (publicly held companies)
- Mail Fraud, Wire Fraud, Bank Fraud, Securities Fraud, SEC Antifraud Rules or Regulations
- Complaints are filed with OSHA
- Claims may be removed to Federal District Court



Whistleblower Laws, cont.

Employee protection provisions in environmental, consumer & worker safety, and financial regulations

- disclosures in furtherance of purpose of the Acts
- different statutes of limitations, remedies, rights of removal, etc
- Most statutes protect corporate employees; some federal
- Examples:
 - Food Safety Modernization Act
 - RCRA, CERCLA, TSCA, CAA, CWA, SDWA
 - Occupational Safety & Health Act
 - COVID-19 Whistleblower Protection Act (pending in Coronavirus Oversight and Recovery Ethics (CORE) Act)



Whistleblower Laws, cont.

State Laws

- common law/public policy exception to employment at will doctrine
- state False Claims Acts
- state (and local) statutory whistleblower protection acts



Protection Is Paramount

- ❖ **Anonymity not always best or safest route**
- ❖ **Alternatives to disclosing/accessing information**
 - FOIA
 - Matchmaking with Congress or Agencies

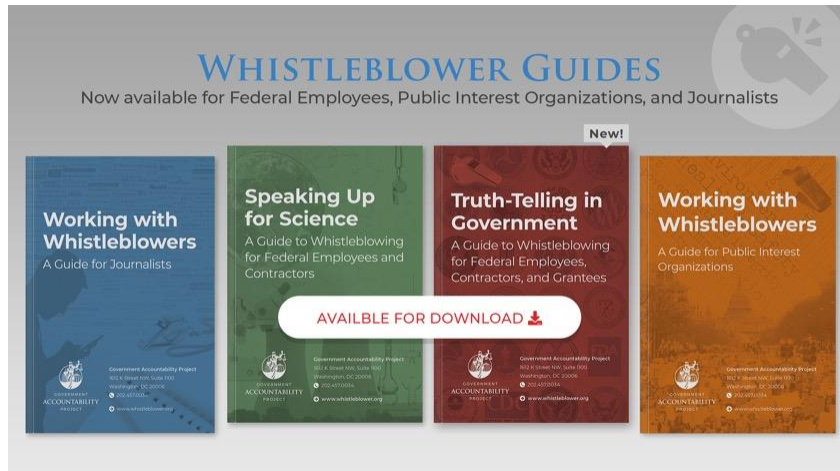


Advice for Whistleblowers

- **Talk to an experienced lawyer.**
- **Create a paper trail or diary** of misconduct, disclosures and reprisal.
- **They should organize support for themselves among their colleagues** if possible.
- **Coach them on how to secure and protect evidence without removing it.**
- **They should communicate with you through secure means.**
- **They should not contact you during their work hours, nor use work equipment (phones, computer, or paper)**
- **They should turn off location tracking in their phone before taking any pictures of documents, and they should strip other metadata.**
- **They should make sure a large number of people possess documents.**



Resources



www.whistleblower.org/resources



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Questions

Questions?

(Use the chat box on the right of your screen to ask questions.)



Join Us!

Join a community of over 9,000 advocates dedicated to protecting and promoting the rights of immigrants in the United States.

To learn more, visit

www.immigrationadvocates.org



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