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1 reporting process.

2           Commingling of refugees and asylum-seekers  
3 with prisoners who have criminal histories can also  
4 place detainees in particular -- or at particular  
5 risk. These and other issues will be addressed by  
6 this panel.

7           Ms. Cheer is the program coordinator for  
8 the Civil Rights Unit of the South Asian Network and  
9 former managing attorney of Los Angeles -- of the  
10 Los Angeles Detention Project for the Catholic Legal  
11 Immigration Network.

12           Mr. Lonagan is a staff attorney at the  
13 Immigration Law Center of the Legal Aid Society in  
14 New York who specializes in cases of noncitizens  
15 detained by the Immigration and Customs Enforcement  
16 program who are facing removal due to criminal  
17 convictions.

18           Ms. Wideman is a clinical psychologist who  
19 volunteers for Doctors of the World and The Florence  
20 Immigrant and Refugee Rights Project conducting  
21 psychological evaluations of immigrants detained in  
22 Arizona at the Florence Service Processing Center  
23 and the Elroy Contract Detention Facility.

24           I would like to thank each of you for your  
25 presentation here. And we will hear first from

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1 Ms. Cheer.

2 MS. SHIU-MING CHEER: Thank you and good  
3 morning.

4 Before my current position at the South  
5 Asian Network, I worked for about six years with  
6 both youth and adult detainees in the Los Angeles  
7 and Phoenix, Arizona, areas.

8 So this morning I'm going to discuss some  
9 of the unique challenges and circumstances faced by  
10 detainees in immigration facilities which make them  
11 more vulnerable to sexual violence.

12 Some immigrant detainees, particularly many  
13 youth from Central America, fled their countries  
14 because they're abused by family members. Domestic  
15 violence is a unique crime because of the  
16 relationship of trust between family members that is  
17 breached by the abused.

18 People who have experienced domestic  
19 violence are often told by the abuser not to report  
20 the crime. They can develop a dependency on or fear  
21 of the abuser that makes them less likely to report  
22 the abuse.

23 When these immigrants are sexually abused  
24 in detention, they are less likely to report the  
25 abuse because of this past pattern. If the abuser

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1 is a guard or fellow detainee living in the same  
2 area, they may be unable to, or afraid to, report  
3 the abuse.

4 Immigrants who come from a history of  
5 familial or societal violence also normalize these  
6 events.

7 One example is those who originate from  
8 Guatemala, El Salvador, or Honduras, countries which  
9 have suffered from civil wars and large-scale  
10 post-civil war violence and poverty.

11 All of the Central American street children  
12 that I have met have experienced abuse while living  
13 on the streets. This can range from verbal abuse  
14 and witnessing the beatings and/or killings of other  
15 street children, to experiencing severe physical and  
16 sexual abuse themselves.

17 They're so accustomed to viewing and living  
18 with violence that it becomes a part of their lives.  
19 They're often not likely to view it as a, quote,  
20 unquote, crime that has been committed against them  
21 and as a crime that needs to be reported.

22 Another category of vulnerable detainees is  
23 battered women. At times when the police are called  
24 regarding a domestic fight, they end up arresting  
25 the person who speaks less English and is less able

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1 to assert their rights. This is often the immigrant  
2 woman who has been a victim of violence.

3 Other times battered women turn to drugs or  
4 alcohol to cope with their situation and are  
5 incarcerated for those drug- and alcohol-related  
6 offenses.

7 Once in immigration detention, battered  
8 immigrant women are similar to abused immigrant  
9 children in the sense that they have normalized  
10 violence in their lives.

11 Those who have been sexually abused in the  
12 past are accustomed to keeping it a secret. They  
13 may be getting some type of benefits in exchange for  
14 sexual favors or may be threatened with retaliation  
15 if they report the abuse. Either way, there are  
16 psychological factors that make them more afraid to  
17 report rape.

18 One factor that makes immigrant detainees  
19 more vulnerable to sexual violence is also the  
20 cultural and linguistic isolation that they face.  
21 Non-Spanish speakers are even more isolated than  
22 Spanish speakers.

23 For example, Vietnamese-speaking detainees  
24 have been held in rural Texas jails for years  
25 without any information given to them in their

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1 native language. This increases the likelihood of  
2 sexual abuse.

3           If there's no one else at the detention  
4 center that speaks their language, these detainees  
5 will be unable to communicate. They would not be  
6 able to inform others of the abuse or access  
7 services because of language barriers.

8           Isolation can also lead to predation by  
9 people from the same culture who take advantage of a  
10 detainee's linguistic isolation.

11           This was the case at a juvenile detention  
12 center in Chicago where a Hindi-speaking guard  
13 sexually abused two juvenile girls. The girls only  
14 spoke Hindi, and the guard used their dependence on  
15 his translation skills to take advantage of them.

16           Detainees may be reluctant to report  
17 incidents of sexual abuse for fear of deportation,  
18 because of the stigma, or because they do not have  
19 access to advocates.

20           Detainees are in such a precarious and  
21 desperate situation that they can easily be forced  
22 into having sex. Threats of violence and  
23 deportation have been used by immigration staff to  
24 coerce detainees into performing sexual acts.

25           Federal agents and guards use the fear of

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1 deportation as a threat if rape is reported.  
2 Detainees who are deported or transferred are also  
3 not likely to pursue rape claims.

4           Conversely, the promise of release is used  
5 to garner sexual favors. Detainees are often so  
6 desperate to leave detention that they are likely to  
7 agree to this. Immigration officials have raped  
8 detainees and abused their authority by exchanging  
9 goods and privileges for sex.

10           Placement in segregation and a threat of  
11 placement in segregation are also used as tools to  
12 make immigrants endure rape or not report rape. The  
13 placement of victims of sexual assault and  
14 segregation for their own protection is very  
15 problematic. Isolation is difficult in normal times  
16 and is even more difficult after a sexual assault.

17           Segregation amounts to punishment for  
18 victims and discourages them from reporting abuse.

19           Officers and staff in immigration detention  
20 facilities hold great power over the detainees  
21 because of their ability to request and recommend  
22 transfers.

23           The location where a detainee is held is  
24 critically important. Being housed thousands of  
25 miles away from family means no family visits,

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1 increased difficulty in finding attorneys, and  
2 difficulty in having family serve as witnesses in  
3 court.

4           Therefore, threats of transfers to  
5 facilities far from their families is an effective  
6 tool in the hands of an abuser.

7           Culturally, many immigrants are less likely  
8 to report sexual abuse because of the shame  
9 associated with it. This is particularly true for  
10 immigrants from Asian countries where sexual  
11 assaults are not openly discussed. If a rape is  
12 made public, the victim is often blamed for it.

13           Victims of sexual assaults in countries --  
14 in Asian countries are also often stigmatized. Once  
15 it is known that they have been assaulted, their  
16 families and communities view them  
17 unsympathetically.

18           This cultural reaction, combined with  
19 unfamiliarity with the process of reporting, make it  
20 less likely that immigrant detainees will report  
21 sexual assaults.

22           The vast majority of immigrants do not have  
23 access to advocates with whom they would feel safe  
24 reporting rape. The vast majority of detainees  
25 ranging from approximately 80 percent to as high as

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1 90 percent are unrepresented in immigration court.

2 This means there are few pro bono services  
3 available for detainees and that the organizations  
4 that do have funding to visit detention centers  
5 often conduct large-scale presentations and quick  
6 screenings. They're not well suited to developing  
7 the safe space and trust that is needed for someone  
8 to disclose that they are victims of rape.

9 The detention of immigrants in local county  
10 jails that are often in rural or isolated places  
11 also makes it difficult for pro bono attorneys to  
12 represent them. Pro bono organizations do not have  
13 the resources to visit detainees in these far  
14 locations, and detainees are often unable to locate  
15 private attorneys who are willing to travel very  
16 far.

17 Additionally, attorneys and paralegals are  
18 not trained in dealing with people who have been  
19 raped or have been victims of sexual assault. Very  
20 few therapists and social workers visit detention  
21 centers, and these are the people best able to  
22 facilitate a safe reporting process.

23 Detainees are not likely to report rape to  
24 the detention center staff because staff wield the  
25 power to transfer them, place them in segregation,

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1 and punish them in other ways for speaking out.  
2 Those staff may also be the same ones who are  
3 sexually assaulting the detainees.

4 Detainees witness their fellow detainees  
5 make complaints about a variety of matters, from  
6 lack of medical care to denial of religious  
7 services. After seeing the inattentiveness and  
8 hostility of the institution to conditions  
9 complaints, they have little reason to believe that  
10 their claims of sexual abuse will be treated any  
11 differently.

12 Lack of privacy is also a factor that makes  
13 immigrant detainees more likely to be sexually  
14 assaulted. Policies and detention centers have  
15 created a sexually uncomfortable or threatening  
16 environment for detainees.

17 Lack of privacy also affects juvenile  
18 detainees who, by virtue of their age, are already  
19 at a higher risk of sexual assault. There have been  
20 cross-gender guardings of juvenile detainees. And  
21 according to Human Rights Watch, children of the  
22 Berks County Youth Center in Pennsylvania are  
23 strip-searched by officers, forced to use toilet  
24 stalls with no doors, and supervised by staff while  
25 in the showers.

1           Policies like this create a perception of  
2 impunity. If the detention centers are already set  
3 up to ignore the privacy rights of detainees, then  
4 detainees have little reason to believe that  
5 reporting sexual assaults will have an affect. If  
6 guards can already grope them during routine  
7 searches, then the guards can also probably sexually  
8 assault them with no repercussions.

9           And, finally, I'm going to touch a little  
10 bit upon the situation of transgenders in detention.

11           Transgender detainees have specific issues  
12 and concerns that need to be looked at. Lack of  
13 privacy increases the likelihood that they will be  
14 sexually assaulted.

15           They're frequently not given bathrooms  
16 separate from the rest of the population nor are  
17 they placed in separate living areas. Many times  
18 preoperative transgender detainees continue to be  
19 housed with men because they still have penises,  
20 despite the fact they have already undergone hormone  
21 treatments which causes their breasts to grow and  
22 for them to lose their facial hair.

23           The ICE Detention Operations Manual's  
24 classification standards do not take into account  
25 factors that contribute to a risk of being sexually

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1 victimized. Men who are gay, transgender, or  
2 effeminate are at higher risk for sexual assaults.  
3 Young and mentally ill women are also particularly  
4 vulnerable.

5           At the San Pedro detention facility, a  
6 reaction to concerns about the placement of  
7 transgender detainees with the regular male  
8 population led to transferring them to the Santa Ana  
9 jail. There they were given individual cells and  
10 not mixed with men. However, many of the  
11 transgender detainees reported that this led to them  
12 feeling further marginalized and further  
13 stigmatized.

14           At San Pedro and other detention centers,  
15 another reaction to concerns about mixing  
16 transgender detainees was to place them in  
17 segregation. This led to them feeling isolated and  
18 less likely to report abuse for fear that reporting  
19 would lead to permanent placing in segregation or to  
20 further transfers.

21           In summary, immigrant detainees are  
22 particularly vulnerable to sexual assault and are  
23 frequently reluctant to report sexual assaults.  
24 Lack of privacy and isolation contribute to this  
25 increased likelihood of rape. These issues should

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1 be looked at when developing strategies and policies  
2 to prevent rape in immigration detention centers.

3 CHAIRMAN WALTON: Thank you very much for  
4 your testimony. I neglected to have this panel  
5 sworn. So could you please stand?

6 Do you solemnly swear or affirm that the  
7 testimony you have presented or will present during  
8 this hearing will be the truth, the whole truth, and  
9 nothing but the truth, so help you God?

10 MS. SHIU-MING CHEER: I do.

11 MR. BRYAN LONEGAN: I do.

12 MS. ANNE WIDEMAN: I do.

13 CHAIRMAN WALTON: Thank you.

14 Mr. Lonegan.

15 MR. BRYAN LONEGAN: Yes, Judge. Thank you.

16 I would like to thank the entire Commission  
17 for not just inviting me here today, but for  
18 actually investigating expanding the scope of your  
19 investigation into immigration detention.

20 In the world of U.S. prison industrial  
21 complex, I think immigration detention is akin to  
22 the neglected child of an already dysfunctional  
23 family.

24 I had a statement prepared, and I'm going  
25 to forego that after the powerful testimony of the

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1 last --

2 CHAIRMAN WALTON: We'll make that a part of  
3 the record.

4 MR. BRYAN LONEGAN: All right.

5 But there were just a couple of things I  
6 wanted to discuss that were raised in previous  
7 panels.

8 First of all, I should tell you that I  
9 actually represent oftentimes the bad guys in what  
10 you're looking at. I represent criminal aliens.  
11 These are persons who are being faced with detention  
12 and deportation because of their criminal  
13 misconduct.

14 Now, as a criminal defense attorney, I  
15 thought I couldn't represent a more despised group  
16 until I started representing just immigration  
17 criminal aliens. Even within the immigration rights  
18 community, this is a group that people would prefer  
19 would just go away.

20 But notwithstanding the moniker "criminal  
21 alien," the problem is that that's such a broad  
22 category.

23 My clients can run the gamut between  
24 somebody who's been convicted of a violent rape to  
25 somebody who is being deported for jumping the

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1 turnstile of the New York City subway system.

2           So in actuality, the most severe cases  
3 of -- the people who are the most violent are  
4 actually not coming through my intake process.  
5 They're actually being held in the prisons in  
6 Upstate New York and are being deported from those  
7 prisons as part of a program instituted by ICE.

8           Most of the people I'm representing have  
9 really small or limited criminal convictions,  
10 usually petty larceny. Fifty percent of the times  
11 it's going to be because of a drug problem.

12           That being said, there are some who come  
13 through with -- who -- well, last week, for example,  
14 ICE rounded up 45 people as part of Operation  
15 Predator, which is a special program ICE has to look  
16 for people who have been convicted of sex crimes.

17           Now, the problem with Operation Predator is  
18 that it casts a very wide net, includes the person  
19 who may have jumped out of the bushes and attacked  
20 somebody. But it also includes people like the one  
21 client I had who eight years before had been  
22 convicted of sexual abuse of a minor. He was 18 and  
23 the girl was 15.

24           And he was picked up by Operation Predator,  
25 reporting to his probation officer, and he was

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1 actually -- because of his offense, he was deemed an  
2 aggravated felony, he was ordered deported. The  
3 kicker here was that at the time of his hearing, the  
4 victim was his wife and the mother of his two  
5 children.

6 So the Operation Predator program can  
7 sometimes be misleading.

8 That being said, when those people were  
9 detained last week, they were all held in the same  
10 jail with the people who were jumping the  
11 turnstiles, people who were there for shoplifting or  
12 drug offenses. And I interviewed some of them. And  
13 some of them were clearly dangerous individuals and  
14 some of them clearly not.

15 The point is, is that within the jails that  
16 I work in northern New Jersey, there is no way to  
17 distinguish potential violators from the people who  
18 would be violated.

19 One thing I wanted to address was  
20 Commissioner Kaneb's question about access to the  
21 courts.

22 The immigration detainees, for the most  
23 part, will at some point see an immigration judge.  
24 But the immigration judges have absolutely no  
25 jurisdiction over the conditions of their detention.

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1 They can't -- they -- I can go to a judge and  
2 complain that somebody's being beaten. There's  
3 nothing the judge can do about it.

4 The only access to address complaints would  
5 be through a civil complaint, a prisoner complaint  
6 typically in federal court or sometimes state court.  
7 There's a law review article cited in my testimony,  
8 by Margaret Taylor, which discusses the problems  
9 behind that.

10 I mean, generally speaking, the bottom line  
11 is, is that it's even harder for an immigration  
12 detainee to seek redress in the court system for  
13 abuse complaints.

14 Additionally, I don't -- the facilities I  
15 work in, the three jails I work in in northern  
16 New Jersey are not particularly isolated. They're  
17 far away from where I work, but they're not  
18 isolated.

19 One of the problems, though, is that for  
20 the entire city of New York, I am the only free  
21 nongovernment attorney visiting these jails to  
22 discuss various issues with them; not just  
23 conditions, but mostly my job is to focus on  
24 providing them with advice and assistance in their  
25 immigration deportation case.

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1           So the point being that there is very, very  
2 little external oversight over these jails that  
3 operate on government contracts.

4           I think one of the things that I found most  
5 hopeful today was to hear Secretary Hutchinson say  
6 that he endorsed the idea of making the detention  
7 standards into regs. I almost fell out of my chair.  
8 I was ready to get out and call home and alert the  
9 media.

10           I mean, this is just an amazing development  
11 that I would really hope this Commission would  
12 embrace because ICE is incredibly resistant to this,  
13 with this kind of perverse bureaucratic thinking  
14 that somehow it's going to make it harder for them  
15 to address conditions.

16           The standards are already inadequate, but  
17 they're a lot better than what exists, which is  
18 nothing.

19           And, just frankly, I've had detainees who  
20 went from the criminal portion of the jail to the  
21 immigration detention center of the jail, and they  
22 said it was night and day. They were less fearful  
23 when they were in criminal custody than in  
24 immigration custody.

25           Because the general feeling they felt was,

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1 you're all going anyway. I mean, if ultimately  
2 you're going to get deported, then we don't have to  
3 worry about what we do to you because who are you  
4 going to complain to? There's no lawyers here, you  
5 can't get to court, and you're all going to get  
6 kicked out in the long run.

7           And there's some truth to that. And  
8 that's -- I think the major problem is that there's  
9 a certain sense of impunity.

10           Finally -- I don't mean to beat up on ICE.  
11 I think that they have an incredibly hard job and  
12 they're not being given adequate resources. I think  
13 part of the problem is that Congress decides to  
14 pander, for a lack of better terms, to public  
15 attitudes and is constantly seeking to escalate  
16 enforcement without providing ICE with the necessary  
17 resources to do it properly.

18           But not -- beyond that, it's also -- in  
19 terms of the criminal deportation issue, the  
20 deportation of lawful permanent residence because of  
21 crimes, they completely have overreached and they've  
22 given ICE an almost impossible task.

23           And I think part of the problem is for  
24 Congress to get a little bit more realistic on what  
25 they expect to do in this realm.

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1           But that being said, I am not -- ICE  
2 recently issued a statement saying that they were  
3 going to -- or they've implemented a new oversight  
4 body or they're beefing up their oversight of the  
5 detention facilities.

6           I'm not sanguine about that. Just -- and  
7 I'll conclude with this just brief story. But last  
8 week I went to the Bergen County jail.

9           And when I got there, the guard said, oh,  
10 are you the ICE inspector?

11           And I said, no. I put that to rest right  
12 away. But then the ICE inspector came.

13           So I thought to myself, great. Here's a  
14 great opportunity for me to introduce myself, open  
15 up a channel of communication. I stuck out my hand,  
16 introduced myself, he grunted and walked away.

17           During the three hours that we were both in  
18 the immigration wing of the jail, I saw him inspect  
19 the facility rather thoroughly, looking at the  
20 showers, the toilets, the cells. He was talking to  
21 the guards, reviewing paperwork. At no time did he  
22 ever speak to a detainee.

23           And, in fact, when I spoke to detainees at  
24 the jail, they said, oh, ICE comes here all the  
25 time, but they never come to speak to us.

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1           So I'm not very hopeful about this new  
2 program.

3           Rather than continue to jabber on, I think  
4 I'll just pass the microphone. Thank you.

5           CHAIRMAN WALTON: We appreciate your  
6 testimony, but what Congress does to ICE is what  
7 they do to Article 3 courts also.

8           MR. BRYAN LONEGAN: Yeah. Exactly.

9           CHAIRMAN WALTON: Ms. Wideman.

10          MS. ANNE WIDEMAN: Hi. My name is Dr. Anne  
11 Wideman. I'm a clinical psychologist. I live in  
12 Arizona.

13          And for the past seven years I've worked as  
14 a volunteer for Doctors of the World Human Rights  
15 Clinic and The Florence Immigrant and Refugee Rights  
16 Project. And in this capacity I've met with dozens  
17 of both adult and child immigrants in various  
18 detention settings.

19          Additionally, I've also spent a lot of my  
20 career working in prison settings, including a  
21 forensic state hospital. And I have a background --  
22 I have been the clinical director of a rape crisis  
23 center, working with sexual trauma victims.

24          And the thing that I know is that sexual  
25 violence thrives in shadows. If you look at all the

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1 places in the world where there's frequent sexual  
2 violence, you'll see common denominators. The  
3 perpetrators have a belief that they will not be  
4 punished for what they will do or they will not  
5 receive significant consequences.

6 They believe that the victim is less than  
7 or unable to seek justice for themselves. And they  
8 recognize that the victim does not have any outlet  
9 for protest or protection and recognize that their  
10 victims are vulnerable and isolated. And prisons  
11 and detention settings, including for immigrants,  
12 are these kinds of settings.

13 Immigrants come into detention from many  
14 ways, either by committing crime -- but many of them  
15 are there having committed no crime at all. And  
16 there are several things I think that make them  
17 particularly vulnerable to sexual violence once they  
18 get into the setting.

19 One, in many immigration detention  
20 settings, the population is mixed between  
21 individuals seeking asylum or refugee status or to  
22 avoid deportation with those individuals who have  
23 committed crimes and are in the process of  
24 deportation for those crimes.

25 Those who have committed crimes and served

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1 prison sentences before coming to immigration  
2 detention bring with them a prison culture. This  
3 includes certain principles. And one of the  
4 principles is silence. Do not tell authorities what  
5 has occurred, but settle it among the inmates.

6 Another is do your own time, which means to  
7 not assist other inmates who are being harmed or  
8 victimized. There are rules governing affiliation  
9 between races and cultures.

10 And the underlying theme of prison culture  
11 is that each person is responsible for him or  
12 herself, for taking care of him or herself. Being  
13 harmed or exploited is the responsibility of the  
14 victim, not the responsibility of the perpetrator.

15 And, additionally, my observation in prison  
16 settings have been that medical staff are not  
17 available for or well trained in detecting or  
18 following up on any kind of sexual abuse.

19 And the immigrants are poorly equipped to  
20 learn this new culture. They're already often  
21 struggling with language, with fear, with anxiety.  
22 They've come from cultures where prison and  
23 incarceration included an expectation of torture or  
24 bad treatment. They have a mistrust of authority  
25 and a fear of causing any kind of trouble which

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1 might hurt their case.

2           They often do not seek out or divulge abuse  
3 to medical or mental health staff even if those  
4 staff are available. They are vulnerable to  
5 accepting abuse in silence.

6           The usual racial or ethnic affiliations  
7 that help other inmates sometimes are often  
8 unavailable to immigrants. Many immigrants have  
9 shared with me that they don't fit into their  
10 particular group in detention. Either they're too  
11 home country or they're too Americanized to fit into  
12 their particular group. This increases their  
13 isolation and their lack of protection for violence.

14           Because they don't understand well how the  
15 prison rules work, they may be easily coerced into  
16 sexual behavior due to threats to their case or  
17 threats to their family members.

18           Immigrants often do not understand that you  
19 don't share information about your family members or  
20 your financial data. And that often gets used  
21 against them.

22           They're unaware of behaviors in states that  
23 make them more vulnerable, isolating, and the  
24 perception that their family has money or  
25 connections.

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1           Immigrants are often in this country due to  
2 abuse, torture, or traumatic events in their country  
3 of origin. And these events may have come due to  
4 war, political activity, discrimination, abuse at  
5 home.

6           They suffer from diagnosable PTSD, anxiety,  
7 and depressive disorders. And these disorders are  
8 all different, but they carry some common  
9 characteristics.

10           They include difficulties in  
11 problem-solving and decision-making, hopelessness,  
12 helplessness, feeling of lack of control, loss of  
13 self-esteem and self-worth, and numbing or loss of  
14 reaction.

15           And all of these characteristics increase  
16 immigrants' vulnerability to sexual violence. They  
17 become easily overwhelmed by what is happening to  
18 them and have difficulty deciding on and following  
19 through with a course of action to change the  
20 situation.

21           They feel a lack of self-worth and come to  
22 expect bad treatment and harm from others. They may  
23 be so numbed and overwhelmed by prior experiences  
24 that they cope with new threats and traumatization  
25 by shutting down and not fighting back.

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1           Their failure to fight back might be  
2 interpreted by other inmates or staff as  
3 confirmation of their willingness to be further  
4 victimized.

5           They may believe they have no control over  
6 what is happening to them and that complaining or  
7 reporting abuse won't result in any change.

8           Male immigrants share with male victims of  
9 sexual violence everywhere the shame and humiliation  
10 of having been victimized by another male.

11           Many male survivors of rape that I've  
12 spoken with share deep humiliation of having been  
13 weak or used as a punk by others. Many men never  
14 share their sexual abuse due to their embarrassment  
15 and their fear the assault having meant their  
16 manhood is less than it was before.

17           Further, male immigrants often come from  
18 cultures and backgrounds where there are strict  
19 religious and cultural taboos about male-with-male  
20 sexual behavior. And as victims they may view rape  
21 as sexual behavior rather than the violent assault  
22 that it is.

23           Immigrants in detention find themselves  
24 isolated in terms of language and understanding  
25 procedures and processes. They often need other

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1 inmates to translate for them, a further  
2 embarrassment when discussing an assault.

3           They come from cultures, often, that view  
4 officers of the government, including corrections  
5 officers, as corrupt and harmful. And this makes  
6 them more unlikely to report abuse or violence.

7           They quickly learn that reporting an  
8 assault not only further alienates them from other  
9 inmates, getting a snitch jacket, or being seen as  
10 weak, but frequently results in their placement in  
11 protective custody, and everyone in detention knows  
12 protective custody is the worst custody to be in.

13           Sexual assault is an incredibly damaging,  
14 violent act. And a common result of rape is rape  
15 trauma syndrome.

16           More than 35 percent of people subjected to  
17 sexual assault are severely impaired by their  
18 experience. And response to rape often results in  
19 symptoms that lead an immigrant in the midst of  
20 legal proceedings to become severely compromised in  
21 their ability to act in their own behalf in their  
22 legal proceedings and preparation.

23           Literally, the effect of a sexual assault  
24 may mean the difference between a safe, continued  
25 life in the United States and return to a dangerous

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1 home situation.

2           You heard that in earlier testimony when  
3 the woman withdrew her asylum request to escape her  
4 situation.

5           Sexual assault and threatened sexual  
6 assault are frequent causes of suicide attempts in  
7 detention.

8           In summary, sexual violence is an act that  
9 results in not only physical, but psychological and  
10 emotional harm to its victims. Consequences of  
11 sexual violence are life-threatening and long-term.

12           Immigrants are particularly vulnerable to  
13 sexual violence and to the adverse effects of sexual  
14 violence due to their social, cultural, and language  
15 isolation; their poor understanding of U.S. culture  
16 and the subculture of prisons; their being mixed  
17 with individuals who have been found guilty of  
18 criminal offenses and who may bring prison culture  
19 with them; and their traumatic experiences in their  
20 culture of origins.

21           I really thank you for this opportunity to  
22 address you.

23           CHAIRMAN WALTON: Thank you very much,  
24 Dr. Wideman.

25           Let me just ask. One of the themes that we

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1 hear constantly is that the good guys who work in  
2 the prison industry, who don't condone this, and  
3 want to report it are deterred from doing so because  
4 of the fear of retribution.

5 Will the potential, if there was federal  
6 legislation, of individual liability on the part of  
7 individuals who did that have any impact?

8 MR. BRYAN LONEGAN: I think it would have  
9 immediate impact.

10 I just want to be clear about one thing  
11 with your question.

12 Are you talking about the good guys within  
13 the corrections offices?

14 CHAIRMAN WALTON: Yes. Or anybody who  
15 works in the prison industry who --

16 MS. ANNE WIDEMAN: I would add medical  
17 staff.

18 CHAIRMAN WALTON: Right.

19 MR. BRYAN LONEGAN: I can tell you that at  
20 the Hudson County jail where I do a lot of work  
21 there are rogue officers and there are great  
22 officers.

23 I have been told by detainees that there  
24 are some that they want to give human rights awards  
25 to because they're so kind. They actually solicit

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1 if there's any problem.

2 But the reality is, is that the rogue  
3 officers have instilled such fear that the good  
4 officers don't know about it. You'll have a shift  
5 where there will be a shift change between, say, a  
6 rogue officer who is --

7 By the way, by rogue activity, I can tell  
8 you what they're doing is they're assisting in  
9 smuggling of contraband into the immigration  
10 facility, the detainee wing. And in exchange for  
11 that, what they do is they -- one detainee was  
12 explaining this to me. He was just released last  
13 week from 16 months in Hudson -- that for any  
14 detainee who's going to go complain, what the rogue  
15 officer will do is bribe another detainee with extra  
16 food, perhaps extra recreation time, maybe the  
17 opportunity to go to the law library or to do  
18 something, to then make a false complaint.

19 And so I have had detainees who are in the  
20 same cell with one of the detainees who's  
21 cooperating with, say, the smuggling and who's been  
22 terrified. Because when the good officer comes and  
23 they do the inspections, he's going to be -- he's  
24 going to be put in the box, he's going to be  
25 punished for whatever his cellmate is doing,

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1 whatever his cellmate is smuggling.

2 And I'm not talking about -- we're talking  
3 cell phones. We're talking Cheese Nips. We're not  
4 necessarily talking smuggling of the dangerous  
5 contraband.

6 So there is -- there are officers who will  
7 resist doing illegal conduct, but I think that they  
8 try to ignore the fact that it's their colleagues  
9 that are engaged in illegal activity, and, instead,  
10 they take it all out on the detainees.

11 I'm not quite sure I answered your  
12 question.

13 CHAIRMAN WALTON: I think you did.

14 Commissioner Kaneb.

15 COMMISSIONER KANEb: First of all, if any  
16 of you would want to comment on something that has  
17 been missing here, in my view -- I'm sorry.

18 Would anyone want to comment on whether or  
19 not there is a source or do you have a source that  
20 would help inform us about the prevalence of  
21 male-on-male prisoner rape in detention facilities?

22 Rather than talking about it across these  
23 tables, I think the Commission would like to know --  
24 and I could ask of people in the audience or people  
25 from Vera, people from SPR, whoever -- you know,

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1 there is data, and the lady next to me is a scholar  
2 in the area on sexual -- male-on-male sexual  
3 violence in prison systems.

4 But I'm asking the question to the room.

5 What about detention centers?

6 CHAIRMAN WALTON: Immigration detention  
7 centers, you mean?

8 COMMISSIONER KANEB: Yeah, immigration  
9 detention centers.

10 MR. BRYAN LONEGAN: I think the problem is  
11 even greater in obtaining that information in  
12 immigration facilities. By the nature in which they  
13 are run and the nature in which they are neglected  
14 prevents anyone from giving you that information.

15 COMMISSIONER KANEB: Well, I was afraid  
16 that might be the answer. What I'm asking, is there  
17 any- -- can anybody give us any leads on is there  
18 any information and, if so, how to get it without  
19 taking the hearing time up?

20 I think we would be interested -- I would  
21 be interested -- okay.

22 Then back to an observation you made. And  
23 it's obvious, but I hadn't thought about it. Rogue  
24 officers who prey upon inmates -- in our case we're  
25 interested in sexual violence -- really can feel

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1 awfully comfortable that they're not going to be  
2 ever -- really ever bothered by a complaint because  
3 people don't have access to the criminal courts,  
4 they don't have practical access to lawyers, and  
5 they're probably going to be deported.

6 So that is something I have noted, and we  
7 will, I'm sure, talk about it as we develop our  
8 report and as the standards are developed.

9 And we are going to develop standards for  
10 detention centers, immigration detention centers as  
11 you know.

12 In that respect, all I've heard about the  
13 standards for immigration detention centers this  
14 morning is they're inadequate and, even worse,  
15 they're ignored. And they may not even be well  
16 known to the people that are supposed to be living  
17 by them.

18 Is that an accurate characterization?

19 MR. BRYAN LONEGAN: I think so. But I  
20 think that the standards that the ABA has put  
21 together would be a tremendous step in the right  
22 direction. Even if we could comply with this  
23 minimum standard that's been established would be a  
24 vast improvement.

25 I wanted to add one other aspect to the

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1 problem of -- about trying to track the problem down  
2 in immigration facilities.

3           You have to understand that the Federal  
4 Government, ICE, has the authority to detain people  
5 anywhere they want in the country. It's not  
6 uncommon for me to find somebody who's gone through  
7 five or six different jails, five or six different  
8 facilities, spreading out throughout the country.

9           And if you have any kind of detainee who is  
10 deemed a troublemaker or who has lodged a  
11 complaint -- for example, I was just speaking to a  
12 man who had lodged a complaint of abuse that  
13 occurred to him in El Paso, Texas. He made the  
14 complaint, and the next thing you know he was sent  
15 over to New Mexico.

16           And then he was bounced back to Texas again  
17 and then back down into New Mexico. And during that  
18 time he was trying to maintain correspondence with  
19 somebody who would address his complaint. And every  
20 time he was transferred, he lost his legal papers,  
21 he lost his documents. He was never able to receive  
22 documents back. He had apparently tried to contact  
23 Washington.

24           So you have this ability to move the  
25 evidence even before it's deported, which prevents

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1 the tracking of complaints.

2 COMMISSIONER KANEB: Thank you.

3 MS. ANNE WIDEMAN: One thing I would like  
4 to add, because I haven't heard it yet this morning,  
5 is addressing the idea that immigrants, children and  
6 adults, have often not committed any crime, and  
7 there's no evidence that they're anything other than  
8 settled in their communities that they came from.

9 And I would like to hear as part of the  
10 standards a look at least restrictive environments  
11 for the housing of immigrants who are awaiting their  
12 detention proceedings. You know, we're accepting as  
13 a given that these people need to be in detention,  
14 and I don't think that's a given.

15 MR. BRYAN LONEGAN: To add on to that, the  
16 problem here is the statute that's been developed by  
17 Congress. And from my point of view, Section 236(c)  
18 of the Immigration and Nationality Act is  
19 particularly troublesome.

20 If anyone is convicted of even the most  
21 minor crime after October of 1998, they're now  
22 subject to mandatory detention.

23 And what's happening is, then, this  
24 explosion in the immigration detention population.  
25 I mean immigration detention is the fastest growing

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1 segment of the detained population in America.

2 And it's in large part because of this  
3 statute. And I think that statute needs to be  
4 revisited.

5 There are a lot of people who are being  
6 detained who are not flight risks, who should not be  
7 in detention, and who have never spent a day -- even  
8 if they have a criminal conviction, have never spent  
9 a day in jail. An additional problem.

10 CHAIRMAN WALTON: Commissioner Aiken.

11 COMMISSIONER AIKEN: Thank you,  
12 Mr. Chairman.

13 I think the appropriate definition or the  
14 word for moving people around in the profession is  
15 called "bus therapy."

16 On the other hand, you have people that are  
17 incarcerated, and it does trouble me that they don't  
18 have the level of legal access. Which obviously you  
19 look at a history of even prison systems, that  
20 systemic change usually comes about through a  
21 judicial process. And that's cut off or very  
22 limited.

23 The second aspect of it, which I want to  
24 ask all of you, and especially Dr. Wideman, what are  
25 some of the behaviors, adverse behaviors that can

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1 serve as key indicators of sexual abuse of being  
2 traumatized while in confinement in an immigration  
3 setting? What are some of the complaints? What are  
4 some of the issues that come to you as behaviors  
5 that may be a key indicator that there's some  
6 pathology?

7 MS. ANNE WIDEMAN: There are several things  
8 that may come up. And a lot of it depends on the  
9 particular response that individual has had to their  
10 assault.

11 Some people become overly aggressive.  
12 They -- or they attempt to create space around them  
13 by either appearing very bizarre in their behavior  
14 or very aggressive. So that's one way. If  
15 someone's behavior suddenly changes, that's an  
16 indication.

17 A second indication is a withdrawal.  
18 People start giving away their belongings. They  
19 withdraw from their correspondence. They are not  
20 participating in their jobs anymore. They're not  
21 going out for rec. They're not going for religious  
22 services.

23 A lot of times there are very subtle  
24 physical cues that don't get picked up by medical  
25 staff. A frequent sign is abdominal complaints,

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1 psychosomatic pains, headaches. Many immigrants  
2 come from cultures where emotional distress is  
3 expressed somatically. And it's often the somatic  
4 complaints where you start to find that there's been  
5 an abuse.

6           Something as simple as complaining of  
7 hemorrhoids and anal fissures, which will get  
8 treated with creams, instead of anyone ever asking  
9 the question, has someone been harming you or  
10 hurting you?

11           So -- I mean, just very basic things.

12           MS. SHIU-MING CHEER: And I would also add  
13 that very often the people who have been victims of  
14 sexual abuse also engage in sexually aggressive  
15 behavior towards others. So that could be also an  
16 indicator. Because that's what they've learned,  
17 that's what they've grown up with.

18           So when they're in a detention center, say,  
19 for example, a 17-year-old boy may then start  
20 becoming sexually aggressive towards younger boys.

21           And I think a common problem that we've all  
22 pointed out is that it's very difficult to have  
23 enough contact with detainees and build up enough  
24 trust and enough rapport with them that they would  
25 be able to disclose these facts or even enough trust

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1 and rapport that the attorneys or the paralegals or  
2 the doctors would pick up on these sort of  
3 psychosomatic symptoms.

4 MR. BRYAN LONEGAN: I just wanted to add  
5 one thing to what Dr. Wideman said.

6 The medical staff, I don't know if it's  
7 necessarily that they're poorly trained, but  
8 institutionally there's a lot of pressure on them  
9 not to pursue medical complaints.

10 When you look at the contract that ICE has  
11 with the jails that I go to, for example, the jail  
12 has to eat the cost of any medical attention. And  
13 it's chronically been a problem that they really  
14 reduce medical care to its -- to an absurd level.

15 I had a client who had anal fissures  
16 because he had AIDS, and for that he was given  
17 Motrin.

18 The pressure on the medical staff is to  
19 limit the cost of medical care inside the facility.  
20 And with that, people look the other way.

21 COMMISSIONER FELLNER: I would like to  
22 follow up, Dr. Wideman, on something that you  
23 mentioned in response to Commissioner Aiken's  
24 question.

25 You said that anal fissures and hemorrhoids

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1 can be signs of abuse.

2 MS. ANNE WIDEMAN: Uh-huh.

3 COMMISSIONER FELLNER: Have you been  
4 hearing -- and this sort of comes back to what  
5 Commissioner Kaneb was asking. Even if there are no  
6 statistics or sort of survey studies of prevalence  
7 of inmate-on-inmate abuse, in your own  
8 experiences -- actually, this is a question for all  
9 of you -- representing or working with detainees,  
10 are you hearing, have you heard of stories that  
11 indicate this is happening? Or are you simply not  
12 hearing at all?

13 MS. ANNE WIDEMAN: I'm aware of those  
14 studies from -- I mean, of those stories from  
15 working in the prison system where I would have  
16 long-term relationships with inmates where over  
17 time, you know, they would get a sense of you as  
18 someone who is not going to be reporting things or  
19 making things difficult for them.

20 And typically with the immigrants, you  
21 don't have that kind of relationship. You might see  
22 someone for three or four hours to do an evaluation.  
23 And in that time you're trying to get as much  
24 information as you can about their particular case.

25 And I don't know that they have the

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1 opportunity to develop any kind of those long-term  
2 relationships.

3           One thing The Florence Project had that was  
4 a very nice project was a social worker as part of  
5 the project. And she often was the person who was  
6 able to develop those long-term relationships and  
7 find out about abuse that other people weren't  
8 picking up on.

9           But I don't think many people have the  
10 resources to provide that kind of --

11           COMMISSIONER FELLNER: So in other words,  
12 in your work, you have not heard directly stories --  
13 okay.

14           MS. ANNE WIDEMAN: No.

15           MR. BRYAN LONEGAN: I would -- I mean, I  
16 have to say the same thing. I have not heard  
17 stories of sexual assault.

18           That being said, I can also tell you that  
19 when I meet with detainees, my -- sometimes I will  
20 have as much as a 15-minute conversation, and that's  
21 all, before the person's transferred to another  
22 facility.

23           COMMISSIONER FELLNER: Uh-huh.

24           MR. BRYAN LONEGAN: Sometimes I have  
25 ongoing relationships that last for a year.

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1           But our focus is to provide representation  
2 in their immigration case and not to pursue  
3 detention issues for two reasons -- for several  
4 reasons: Number one is we don't receive any funding  
5 for that. I know that might be a bit of a cop-out,  
6 but we just simply don't have the resources.

7           But, secondly, one of the things we're  
8 really afraid of is if we start pursuing detention  
9 issues, that we're going to be barred from doing the  
10 "know your rights" presentations that we do in these  
11 jails. We're concerned about our access being  
12 limited if we were to start to delve and pursue  
13 these things.

14           So from an institutional point of view,  
15 it's something that we very much want to deal with.  
16 We just don't have the resources or protection from  
17 the government to make sure that that happens.

18           MS. SHIU-MING CHEER: I've only heard one  
19 story of sexual assault in an immigration detention  
20 center. But I would echo what the others are saying  
21 in the sense that I think there's not enough  
22 training, also, given to legal service providers on  
23 how to detect sexual assault.

24           Before trafficking became a widespread  
25 issue, very often our intakes -- we never asked

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1 detainees how they came into the U.S., who brought  
2 them here, you know, was there any kind of  
3 indication they had to perform some kind of sexual  
4 favor in order to come to the U.S. But after we  
5 were trained on looking for trafficking, we then  
6 found many detainees who had been indeed trafficked.

7 So I think if legal service providers are  
8 also trained on how to detect sexual assaults and  
9 taught which type of questions to ask, then we would  
10 be able to see many more incidents of it.

11 COMMISSIONER FELLNER: Thank you.

12 CHAIRMAN WALTON: Thank you.

13 Commissioner Struckman-Johnson.

14 COMMISSIONER STRUCKMAN-JOHNSON: Just a  
15 question John asked me if I knew, and I'll ask Jamie  
16 if she knows, Richard Hoffman, Richard Tewksbury.

17 Is the BJS survey going to go into an  
18 immigration unit?

19 CHAIRMAN WALTON: We're being told no.

20 COMMISSIONER STRUCKMAN-JOHNSON: Okay.  
21 That's what I thought.

22 COMMISSIONER FELLNER: I had just written  
23 down that question to ask myself.

24 COMMISSIONER STRUCKMAN-JOHNSON: So is  
25 there any time to change? Time to add it? A few

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1 million here?

2 MR. RICHARD TEWKSBURY: BJS has indicated  
3 they're considering it for their second year. First  
4 year of data collection they will not be in ICE  
5 facilities.

6 COMMISSIONER STRUCKMAN-JOHNSON: But  
7 they're considering later?

8 MR. RICHARD TEWKSBURY: Yes, ma'am.

9 COMMISSIONER STRUCKMAN-JOHNSON: Okay.  
10 That seems like a really important thing to do.  
11 Because it sounds like nobody can say. It's just a  
12 big suspected -- okay.

13 Thank you.

14 I just want to say thanks for the testimony  
15 here, just concise, detailed, you know, really  
16 important and from all three perspectives. It will  
17 be very, very helpful and certainly eye opening,  
18 kind of shocking revelations. So thank you for  
19 that.

20 CHAIRMAN WALTON: We have a little bit of  
21 time.

22 Let me just ask, Dr. Wideman, because I've  
23 had people say to me, well, if somebody has or makes  
24 a claim that they were sexually abused and then they  
25 are released and they engage in behavior that they

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1 know or should know will put them back in that same  
2 environment, how can their allegations about the  
3 sexual abuse be credited?

4 Because one would assume if it was a  
5 horrible experience, that they wouldn't engage in  
6 behavior that would cause them to end up or  
7 potentially end up back in that same environment.

8 As an expert who looks at human behavior  
9 from a psychological perspective, do you have any  
10 insight on that?

11 MS. ANNE WIDEMAN: The experience of sexual  
12 assault and sexual violence is very disintegrating  
13 to a person's emotional state.

14 And there's a lot of evidence and research  
15 that after a person has been a victim, many parts of  
16 their lives come apart. Having difficulty  
17 maintaining employment, having difficulty  
18 maintaining relationships, having difficulty  
19 maintaining a steady state of mood. All of those  
20 things, especially if the trauma is untreated, can  
21 happen.

22 And so what you have is people turning to  
23 drugs or alcohol, people turning to lifestyles that  
24 reflect their lack of care about themselves, that  
25 end them up in the very places where they were

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1     traumatized to begin with.

2             And it's really a vicious cycle.  So...

3             CHAIRMAN WALTON:  Any other questions?  We  
4     do have a little bit of time.

5             COMMISSIONER FELLNER:  I've sort of been  
6     puzzling with the whole -- the cultural barriers  
7     question.  You have such a confluence of factors,  
8     the cultural barriers, the short amount of time  
9     people may be in detention, and then the fact that  
10    they may be moved around, which makes it difficult  
11    to acquire the insights on a one-on-one basis by  
12    which you might really know what's going on.

13            And I'm trying to -- the cultural barriers  
14    are going to be hard to change.  I mean, that's sort  
15    of there.  The moving around we might be able to  
16    make recommendations about.

17            But I'm wondering if -- other than saying  
18    many of these people shouldn't be detained in the  
19    first place, which I happen to agree with -- I mean,  
20    I think this country tends to incarcerate far more  
21    than is necessary for any legitimate purposes and  
22    certainly in the immigration area.

23            But short of simply having people not be in  
24    facilities where they are at risk, do you have,  
25    also, more practical suggestions for how there can

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1 be better complaint -- self-protective or mechanisms  
2 or complaint mechanisms or oversight which can help  
3 deter abuse or -- let's start with deterrence.

4 Because some of what you've been saying  
5 sort of leads to a dead end. It's sort of, like,  
6 well, where -- what can we do?

7 So I'm wondering if we can focus on what  
8 some of the steps that might be -- you might suggest  
9 be taken, that we might incorporate it as standards  
10 that we insist upon for these facilities that would  
11 help deter or ensure that the impunity that  
12 currently exists doesn't continue to exist.

13 MR. BRYAN LONEGAN: You know, I don't mean  
14 to sound like I'm wisecracking, but it always seems  
15 to me that if you don't want people to be treated  
16 like they're in jail, don't put them in jails.

17 COMMISSIONER FELLNER: I agree.

18 MR. BRYAN LONEGAN: Well, what I'm getting  
19 at is not to just incarcerate them from the first  
20 place, but if -- I mean, one of the realities is  
21 most scholars in the field recognize that you're not  
22 going to have a credible immigration policy without  
23 the threat of detention.

24 But do we have to detain people in jails  
25 where guards are necessarily -- there's a culture of

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1 detention. And it's penological. And that's not  
2 what we're supposed to be doing with immigration  
3 detainees.

4 So maybe we just need to rethink how it is  
5 we detain people to begin with. Maybe they  
6 shouldn't be in the Bergen County jail, the Hudson  
7 County jail, the Passaic County jail. Maybe they  
8 need to be in a specialized facility.

9 Now, I know there are some, and they're  
10 rife with problems, I mean, down south. But I think  
11 we need to do a complete reevaluation as to what  
12 we're trying to achieve in detention and how it  
13 should be done.

14 And it seems awfully simplistic, but...

15 COMMISSIONER FELLNER: No. I think it's  
16 very important. Because, again, as you and others  
17 have pointed out, many of the people who are  
18 currently being placed in these facilities have  
19 committed no acts of violence, have given no  
20 indication that they are -- need to be incarcerated  
21 other than that supposedly they might be a flight  
22 risk.

23 So there are ways to prevent flight by  
24 having secure perimeters, but there's no need within  
25 those perimeters to have it operated as a criminal

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1 facility or facility for people who have --

2 MR. BRYAN LONEGAN: I have to say -- you  
3 know, when I heard Mr. Rodriguez this morning, I was  
4 thinking how I would love to see some of the  
5 policies he was talking about initiated. The  
6 cameras, for example, in the facility, the design of  
7 the facilities I think is part of it as well.

8 Right now the detainees in Bergen County  
9 jail were in a cellblock that was about as large as  
10 this room. It was about 75 detainees. It was  
11 shaped like a trapezoid. And from any part of the  
12 jail, you could see any other. There were no secret  
13 nooks and crannies and there were cameras and that  
14 was a great facility.

15 I mean, it was a -- you know, great as  
16 compared to what I was working in in other  
17 facilities.

18 And then, unfortunately, they moved them to  
19 an older section of the jail where it's filled with  
20 corners and black areas and dark areas and there is  
21 no camera and things just seemed to be going to hell  
22 in a handbasket. And now -- and what was once a  
23 jail that I used to praise I can no longer praise.

24 So I think that there are experts in  
25 prisons. I think they're on the right track and

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1 they might know how to do these things in practical  
2 ways.

3 One of the -- we haven't -- in legal aid we  
4 have a prisoners rights bureau, which,  
5 unfortunately, doesn't have the resources to work in  
6 immigration detention.

7 But when I was preparing to testify here,  
8 they said, ask them for cameras.

9 So I'll do that now.

10 CHAIRMAN WALTON: I think, Dr. Wideman,  
11 you've really kind of commented on what I'm going to  
12 ask now. But one of the hurdles I think any effort  
13 like this has is the attitude of indifference that a  
14 lot of society have about the problem of prison  
15 rape.

16 I think Secretary Hutchinson commented on  
17 that when he made his statement about someone  
18 saying, well, there are people who care about that,  
19 I guess.

20 And I think, unfortunately, that attitude  
21 of indifference is an impediment. And I think one  
22 of the things that we have to be able to do in order  
23 to ensure that what we recommend becomes a reality  
24 is to show that there is a benefit that the greater  
25 society acquires from making sure that this type of

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1 behavior doesn't take place.

2 And if the larger community understands  
3 that reality, I think they become more acceptive of  
4 bringing about change to deter these type of events  
5 taking place.

6 But do you know of any research that's been  
7 done regarding the issue of recidivism and the  
8 correlation between having been sexually abused in a  
9 prison setting and an increased rate of recidivism  
10 as a result of that?

11 MS. ANNE WIDEMAN: There actually are some  
12 studies. And, in fact, Human Rights Watch, in their  
13 survey of different studies done, did find a  
14 correlation between higher recidivism rates and  
15 assault in prison.

16 I can compile some of those for the  
17 Commission.

18 CHAIRMAN WALTON: That would be helpful.  
19 If you know of that, that would be helpful.

20 COMMISSIONER AIKEN: Mr. Chairman, I have  
21 one quick question.

22 CHAIRMAN WALTON: Okay. We have about five  
23 more minutes.

24 MS. ANNE WIDEMAN: I would say just in  
25 terms of setting up standards, from a psychological

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1 perspective, we always want to look at what we  
2 reinforce.

3           And I think that you spoke earlier about  
4 accountability, and where does accountability lie?  
5 And as a warden or a deputy warden or a captain on a  
6 yard or in a detention center, do -- am I  
7 accountable for people who get hurt on my watch, or  
8 is it always the line officer who ends up losing  
9 their job or getting transferred or moving around?

10           Where is the accountability for me as the  
11 executive of my business for people who get hurt on  
12 my watch? And I think that's an important piece of  
13 any standard.

14           COMMISSIONER FELLNER: Very good point.

15           COMMISSIONER AIKEN: All right. I do agree  
16 with you. However, also what usually happens in a  
17 bureaucratic process is when something is going  
18 wrong, we find somebody to get.

19           MS. ANNE WIDEMAN: Yes.

20           COMMISSIONER AIKEN: And oftentimes we  
21 don't look at the systems and relationships between  
22 various systems that are supposed to protect and  
23 ensure that things are done. So we pick people out  
24 instead of looking at big systems and how these  
25 systems interrelate to each other.

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1           My question is probably unfair to you, but  
2 I'll just pose it.

3           I term it as the 800-pound gorilla that  
4 sits in the room, and we don't talk about it. It's  
5 not necessarily the actual physical act of sexual  
6 abuse upon a person, but the impact, the impact of  
7 sexual aggression in confinement facilities.

8           And what's prompted me to say this -- and I  
9 stand corrected with the testimony.

10          We heard testimony this morning about a  
11 graphic act of violence of an officer upon a person,  
12 related to oral sex. And that was clearly stated.

13          But also in that same testimony, at least I  
14 heard that there was a confrontation, fight -- I  
15 think the word was "riot" after this person went  
16 back to that confinement facility and was assigned  
17 to a higher level of security and two inmates were  
18 fighting over who was going to control her. And  
19 that injuries resulted.

20          And I wonder, those acts of aggression -- I  
21 mean, I didn't hear anything about oral sex when  
22 that happened. I didn't hear indications about, you  
23 know, collecting the semen and all of that stuff.  
24 But here is, quote, unquote, riot. Here is injury.  
25 Here is people fighting over an individual that's

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1 been classified and put in this type of housing.

2 Now, my question is, how big is this issue  
3 of aggression and other side effects of this issue  
4 of sex abuse within confinement facilities,  
5 especially in immigration? Is that farfetched or  
6 does it make any sense at all?

7 MS. ANNE WIDEMAN: I would say that rape  
8 and sexual assault and sexual abuse are all acts of  
9 aggression and violence and are not sexual acts at  
10 all.

11 And I would say that they're just part of  
12 the continuum of assault, stabbing, beating. And I  
13 think that we have kind of made an artificial  
14 distinction and view rape as a sexual act when, in  
15 fact, it's an assault. It's a violent physical  
16 assault, and the threat of it is a physical threat.

17 CHAIRMAN WALTON: Okay.

18 COMMISSIONER FELLNER: I just want to -- I  
19 think -- I had the feeling that what Jim was sort of  
20 asking more is it goes back to something we talked  
21 about earlier, that you can have violence that may  
22 not on its face look like sexual violence in the way  
23 that forced oral sex is clearly sexualized violence.  
24 But it is still violence, in this case the riot,  
25 that is triggered by or related to abusive sexuality

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1 or abusive sexual conduct in prisons. And I think  
2 that's what he was going -- yeah.

3 COMMISSIONER AIKEN: Yes. The big issue  
4 that I'm trying to determine here is not the actual  
5 act of penetration or whatever, but the intimidation  
6 and the fear and the reaction as a result of a  
7 person's sexuality, as a result of fear of something  
8 like that happening to an individual while in  
9 confinement status in an immigration situation.

10 MS. SHIU-MING CHEER: I would say that that  
11 is fairly widespread. And in the sense that when  
12 you look at people in a situation where they are  
13 powerless, such as people in immigration detention  
14 centers, they tend to want to exert power in some  
15 way against others that they see as even more  
16 powerless than themselves.

17 So often what happens is if a man is  
18 perceived to be sort of effeminate or even  
19 homosexual, then the other detainees will act  
20 towards him in a very aggressive way.

21 And it might not reach the level of sexual  
22 assaults, but very often it's derogatory actions,  
23 name-calling, a whole host of actions that create a  
24 very inhospitable atmosphere for this person.

25 CHAIRMAN WALTON: Okay. Well, thank you

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1 very much, as with all the panels, for your  
2 presentation. It's very helpful and will  
3 contribute, I think, significantly to our effort to  
4 address this problem.

5 We'll recess until a quarter to 1:00.

6 Thank you.

7 (Recess taken from 12:02 p.m. to  
8 12:51 p.m.)

9 CHAIRMAN WALTON: Okay. We're ready to  
10 resume. The other commissioners are on their way.  
11 But to try and stay on schedule, we will get  
12 started.

13 Our next panel will address strategies for  
14 preventing and responding to sexual violence in  
15 immigration detention facilities.

16 Would you please stand and take the oath.

17 Do each of you solemnly swear or affirm  
18 that the testimony you will provide to this  
19 Commission will be the truth, the whole truth, and  
20 nothing but the truth, so help you God?

21 MS. REBEKAH TOSADO: I do.

22 MS. CHRISTINA DE CONCINI: I do.

23 MS. ILIANA HOLGUIN: I do.

24 CHAIRMAN WALTON: Thank you.

25 I would like to welcome our next three

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1 witnesses: Ms. Rebekah Tosado, Ms. Christina  
2 DeConcini, and Ms. Iliana Holguin, who will discuss  
3 strategies for preventing and responding to sexual  
4 violence in immigration detention facilities.

5           Currently, the Department of Homeland  
6 Security has standards that govern all immigration  
7 detention facilities and review immigration and  
8 detention enforcement facilities for compliance.

9           In addition, both the Department of  
10 Homeland Security, their Office of Inspector  
11 General, and Office of Civil Rights and Civil  
12 Liberties reviews complaints of abuse in detention  
13 facilities.

14           The experts on the panel will discuss the  
15 existing mechanisms for ensuring safety and  
16 accountability in immigration detention facilities  
17 and help the Commission to understand how its  
18 standards can build on these efforts.

19           In addition, the panel will discuss the  
20 importance of providing access to advocates on the  
21 outside and will describe the legal orientation  
22 program run through the executive office for  
23 immigration review.

24           Ms. Tosado is the director for review and  
25 compliance in the Office for Civil Rights and Civil

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1 Liberties in the United States Department of  
2 Homeland Security.

3 She has responsibility for overseeing the  
4 resolution of all complaints filed with the office  
5 alleging abuses of civil rights, civil liberties,  
6 and profiling based on race, ethnicity, or religion  
7 by employees and officials of the Department of  
8 Homeland Security.

9 Ms. DeConcini is director of policy at the  
10 National Immigration Forum and former director of  
11 Public Education and Advocacy at the Catholic Legal  
12 Immigration Network, who has a long history of  
13 advocating for the legal rights of immigrants and  
14 refugees, including negotiating with the INS and the  
15 Department of Justice about the need for detention  
16 standards.

17 Ms. Holguin is the executive director of  
18 Diocesan Migrant and Refugee Services Incorporated  
19 in El Paso, Texas, which represents the legal  
20 orientation program to immigrants detained at the  
21 El Paso Service Processing Center and at the two  
22 contract facilities in New Mexico.

23 Please join me in welcoming and thanking  
24 each of these panelists for the time that they've  
25 taken to be with us here and to provide assistance

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1 to the Commission as we address this very important  
2 issue.

3 At this time we will first hear the  
4 testimony of Ms. Tosado.

5 MS. REBEKAH TOSADO: Mr. Chairman and  
6 Members of the Commission, I'm Rebecca Tosado. I'm  
7 director for review and compliance for the Office  
8 for Civil Rights and Liberties in the Department of  
9 Homeland Security.

10 I would like to thank the Commission for  
11 the invitation to speak with you today on this  
12 important topic. I'll be providing a summary of my  
13 written testimony.

14 I would like to state at the outset that  
15 I'm here to provide information as well as to listen  
16 and learn. And I've already learned a great deal,  
17 and I'll be taking back a lot of this information to  
18 my colleagues at DHS.

19 The Homeland Security Act established the  
20 position of officer for civil rights and liberties  
21 within the Department of Homeland Security. The  
22 mission of the office is to assist the dedicated men  
23 and women of the department to secure the nation  
24 while preserving our freedoms and our way of life.

25 Our office is able to accomplish this in

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1 part by providing proactive legal and policy advice  
2 to the departmental components on a wide range of  
3 issues as well as investigating and resolving  
4 complaints that are filed by members of the public.

5 In -- a given day in ICE detention -- ICE,  
6 as you know, is Immigration and Customs Enforcement,  
7 the component of DHS that is charged with the  
8 detention of immigration detainees.

9 There are approximately 26,000 individuals  
10 in detention. Individuals are housed at ICE service  
11 processing centers which are owned and operated by  
12 ICE, contract detention facilities and  
13 intergovernmental service agreement locations  
14 throughout the U.S.

15 The department is aware that sexual  
16 assaults may occur within any detention environment  
17 and is committed to preventing and responding to  
18 rape and sexual assault within immigration  
19 detention.

20 We understand that there must be a  
21 framework of protections in place.

22 My office, in particular, plays an  
23 important role in DHS's response to rape and sexual  
24 assault in immigration detention, particularly  
25 because of the complaint mechanisms that we offer.

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1 ICE detention centers are also subject to  
2 investigations by the OIG, which is the Office of  
3 Inspector General, and the general accounting  
4 office.

5 ICE facilities are also open to the UN High  
6 Commissioner For Refugees, also known as UNHCR, and  
7 the American Bar Association. These organizations  
8 enjoy collaborative relationship with ICE and report  
9 concerns to ICE.

10 ICE has also taken a number of proactive  
11 steps and has policies in place to address the  
12 serious issue of sexual assault of detainees.

13 In October 2006 ICE issued a directive to  
14 all offices -- all field offices that information  
15 regarding sexual assault awareness be available and  
16 posted to detainees on all of the facilities.

17 The information which is contained in a  
18 poster and also in pamphlet describes what sexual  
19 assault is, that it is not to be tolerated, and what  
20 a victim can do to seek protection care. And what  
21 actions ICE needs to take in response, or the local  
22 facilities staff.

23 This information must be prominently  
24 displayed at all times in common areas of the  
25 facility and is to be available in both housing

0147

1 units and in libraries.

2 I provided Members of the Commission a copy  
3 of the pamphlet with my written testimony.

4 ICE also has plans to translate the  
5 pamphlet into other languages, and my office will be  
6 assisting in that effort.

7 ICE, as you know, has a number of detention  
8 standards in place that are part of the framework to  
9 prevent assault and sexual assault in detention  
10 environment.

11 Significantly the classifications standard  
12 limits detainees -- limits their exposure to persons  
13 that have a history of violate offenses. The  
14 classification standard is one that must be  
15 enforced.

16 There are a number of other standards that  
17 are important -- important to point out. And  
18 suffice it to say that our office is involved in  
19 making sure that the oversight and implementation of  
20 the detention standards is in place. And that is  
21 quite a task. As you've heard, there are 26,000 ICE  
22 detainees in custody right now.

23 I would also like to note that if an ICE  
24 employee is involved in any incidence or allegation  
25 of sexual assault or rape, the employee can be

0148

1 immediately placed on administrative leave and  
2 terminated upon a proper finding of misconduct.

3 My office believes there should be  
4 continued oversight and monitoring. In addition,  
5 there must be continued -- there must be efforts to  
6 provide prevention in immigration detention  
7 facilities, such as through the classification of  
8 detainees. There must be mechanisms to complain and  
9 to follow up with such complaints, such as  
10 investigations, and there must be an appropriate  
11 response from the government officials.

12 As -- in concluding the summary of my  
13 testimony, the issue of sexual assault and detention  
14 of any kind is a serious and complex issue, as you  
15 well know, and I'm beginning to learn more about  
16 today.

17 Department and -- continues to take steps  
18 to prevent sexual assault in immigration detention.

19 The department and my office continue to be  
20 available to respond to this issue with the goal of  
21 ending rape and sexual assault in any immigration  
22 detention facility.

23 Thank you.

24 CHAIRMAN WALTON: Thank you very much.

25 Ms. DeConcini?

0149

1 MS. CHRISTINA DE CONCINI: Yes. Hi.

2 Thank you very much, Judge Walton, and  
3 Commissioners for inviting me here today to testify.

4 And I'm not going to read my testimony.  
5 I'm going to just speak about it.

6 CHAIRMAN WALTON: Thank you. As with all  
7 the other witnesses, we will admit your written  
8 testimony into the record.

9 MS. CHRISTINA DE CONCINI: Thank you.

10 First, I want to say that I deeply  
11 appreciate that this Commission is focusing on  
12 immigration detention. There's an enormous need for  
13 independent scrutiny of this, and I'm excited about  
14 anyone looking into this because it really is a  
15 system that is largely out of the eyes of the  
16 public.

17 And I had said that I -- in my testimony  
18 and also when I was called to ask to come testify,  
19 that I personally don't have knowledge about sexual  
20 assault in immigration detention. And I've heard  
21 the frustration by the Commission how there's little  
22 knowledge about that.

23 And I think that that lack of knowledge is  
24 reflective of so many of the problems within ICE  
25 detention. So much that goes on there is below the

0150

1 radar screen and out of everybody's scrutiny and,  
2 you know, isolated behind closed walls.

3           This is a -- for instance, just -- there  
4 was just a GAO report -- and I don't have the  
5 specifics because I'm just thinking of this today  
6 when I heard the frustration with how come we don't  
7 know what's going on -- that looked -- that was just  
8 released on ICE's ability to track where detainees  
9 are.

10           And I don't want to cite the statistics  
11 because I won't have them exactly right, but I can  
12 get you the report. And it's on the GAO Web site.  
13 But there's a large -- there's -- when a person is  
14 removed from one facility to another, they're  
15 supposed to enter that into a database, and the GAO  
16 report found that that doesn't happen a lot of  
17 times.

18           So what it did is it confirmed, which many  
19 of us know who represent ICE detainees, that ICE has  
20 no idea where people are detained. And if you're a  
21 person whose family member has come to the United  
22 States and you know they got picked up, there's no  
23 clear way of finding out where that person is, and  
24 this report just confirmed that.

25           So that just gives you -- I only cite that

0151

1 because it's just -- if they don't know where the  
2 ICE detainees are, you can see why the rest of us  
3 are sort of at a loss at being able to give you a  
4 lot of specifics and statistics.

5           And I thought Mr. Hutchinson's testimony  
6 that he couldn't get statistics on this with his  
7 connections at DHS was really worth underscoring  
8 there.

9           I want to emphasize, as I did in my written  
10 testimony, that this group of people, in my opinion,  
11 are far more vulnerable and isolated than other  
12 people who are incarcerated in the United States.

13           And I think the number one reason why that  
14 is, is it's the only group of people that our  
15 government jails and takes away their liberty  
16 without giving them court-appointed counsel. So  
17 huge numbers of them do not have legal  
18 representation.

19           And, yes, they do all have a day in court  
20 because they can't remove them without making them  
21 go before an immigration -- well, they can in some  
22 circumstances, but most of the ones that are in  
23 detention end up before an immigration judge.

24           But it's in an adversarial proceeding in a  
25 language that they don't understand and a culture

0152

1 that they've never heard of with witnesses and  
2 evidence and government prosecutors. And so the  
3 majority of the people that go it alone or pro se  
4 are at a grave disadvantage of ever having any kind  
5 of justice happen in their favor.

6 And more importantly or equally  
7 importantly -- not more importantly, equally  
8 importantly is that without having access to any  
9 kind of legal counsel, many of these folks have no  
10 access at all to anyone outside the immigration  
11 detention facility.

12 So if they did have complaints or reports  
13 of abuse or sexual abuse or other things, it's very  
14 hard to imagine how the person would figure out to  
15 report that, despite posters that might exist, which  
16 I think are very good, and pamphlets. They may not  
17 be in the person's language. They may come from a  
18 culture or background where that isn't part of what  
19 they do.

20 I want to talk briefly about the detention  
21 standards. I was quite intimately involved in the  
22 promulgation of those. And I want to just focus on  
23 the four that are sort of considered the ABA  
24 detention standards. They're the ones that have to  
25 do with access, visitation, legal orientation, law

0153

1 libraries, and phones.

2           There has been real progress. I would  
3 maybe diverge from some of the previous panelists.  
4 I do think that the fact that they exist is a step  
5 in the right direction. There have been some things  
6 that have been remedied by them.

7           For instance, we don't hear complaints like  
8 we used to that lawyers can't get in to see people  
9 in detention. I'm not saying there are no  
10 complaints, but that used to be, like, the standard  
11 operating procedure before the detention standards  
12 is you couldn't get in to see a client. That was  
13 the norm.

14           Likewise, groups that want to do legal  
15 orientation programs where -- before the detention  
16 standards across the board, nowhere in the United  
17 States was that allowed except in one facility in  
18 Arizona, and now we don't hear those kind of  
19 complaints.

20           But I also want to outline the problems  
21 that -- with the phone standard have been ongoing  
22 since the day it's been implemented and exists today  
23 and are really quite horrific, given what I just  
24 said about the fact that many folks have no contact  
25 with counsel.

0154

1           So the only way that they could contact  
2 counsel is by having a phone.

3           And the detention standards very  
4 specifically state that the phones in all the  
5 facilities need to be preprogrammed so that you  
6 could make a free call to a legal aid organization,  
7 if there was one -- which there are in some  
8 places -- or a charitable organization that provides  
9 representation to immigration detainees.

10           The fact is despite aggressive advocacy on  
11 this, endless amounts of meetings with ICE on this  
12 and endless complaints about this, in huge numbers  
13 of facilities this standard -- there's not  
14 compliance with this standard.

15           And I know that Iliana is going to tell  
16 you -- I just read her testimony -- about the  
17 problems in the facilities she's at. But every  
18 single facility I've ever been at has problems.

19           You can -- either the phones aren't  
20 preprogrammed. You can only make collect calls.  
21 Legal service organizations are not going to be able  
22 to accept and pay for collect calls from thousands  
23 of people in detention facilities.

24           You have to have the phone number ahead of  
25 time to the legal aid organization you want to call.

0155

1           How is somebody from a foreign country in a  
2 foreign situation going to know that? It has to be  
3 on a list to make that call. All of these things  
4 which are in direct opposition to what the standard  
5 requires on the phone.

6           So I really think that -- I could go on and  
7 talk for an hour on just the phone issues, it's so  
8 severe.

9           Also, Mr. Hutchinson talked about the  
10 importance of people being able to contact their  
11 consulates without phone access that works in a way  
12 the indigent folks can do. They also aren't going  
13 to be able to do that.

14           Despite all of this, DHS definitely --  
15 there continues to be -- another big problem is a  
16 huge disconnect between sort of what DHS at  
17 headquarters say and what happens in the field.

18           I have an enormous respect for the Office  
19 of Civil Rights and Civil Liberties at the  
20 Department of Homeland Security as well as my  
21 colleague, Ms. Tosado. And I do want to say that I  
22 do believe that that entity in DHS has been more  
23 responsive to complaints of people in immigration  
24 detention than anything in the history of INS, or at  
25 least the 19 years that I dealt with that agency.

0156

1           So I do think that that is a very positive  
2 place and would agree that they need more funding to  
3 be able to implement individual follow-up on  
4 complaints, et cetera.

5           However, it's important to note that they  
6 do not have authority over ICE. They do not control  
7 ICE, and they're not an outside entity with  
8 independence to force ICE to comply with the phone  
9 standard or what have you.

10           So they can make recommendations, and they  
11 can also do a lot of -- and do do a lot of good work  
12 on individual complaints of abuse. But they are not  
13 able to fix these systemic problems that keep  
14 immigration detainees highly isolated and  
15 vulnerable.

16           Then I just wanted to also flag other  
17 issues that add to the barriers. I do hope your  
18 recommendations will flag this access to counsel,  
19 and I want to flag other issues that aggravate these  
20 barriers to counsel.

21           The fact that DHS regularly detains people  
22 in remote facilities where there are no lawyers, law  
23 schools, or any legal resources is a problem. The  
24 fact that people are regularly transferred all over  
25 the country when they do have counsel.

0157

1           We know many cases where somebody may have  
2 a pro bono lawyer and without the pro bono lawyer  
3 knowing the person's transferred a thousand miles  
4 away and that ends the representation that might  
5 exist.

6           I also want to flag what was touched on in  
7 the previous panel. There are -- first of all,  
8 by -- I agree with what -- that some of it is  
9 congressional and that too many people are mandated  
10 to be detained, but I also want to flag that there  
11 are people in detention that under ICE guidelines do  
12 not need to be detained, asylum seekers who meet the  
13 parole requirements and are not released.

14           And, again, this is one of these things  
15 that we bring up again and again and again and again  
16 and complain and there are reports upon reports by  
17 human rights organizations on this topic and it's  
18 not changed.

19           And so a concrete recommendation I would  
20 have on that front is that the ICE guidance on  
21 parole of asylum seekers and others would be put  
22 into regulation so that it would actually be  
23 enforceable. Because just doing advocacy and having  
24 the GAO look at it and other people write reports  
25 about it, it doesn't get resolved.

0158

1           Likewise -- I think this was brought up by  
2 Ms. Fellner -- the idea of something other than  
3 strict imprisonment for people is an important  
4 issue.

5           ICE has, to its credit, moved forward and  
6 gotten more funding from Congress for alternatives  
7 to detention. And these need to be explored and  
8 implemented to a greater degree.

9           And my testimony outlines -- my written  
10 testimony -- the cautions that need to be taken  
11 within the realms of doing that so that it doesn't  
12 end up doing more harm and actually releases people  
13 who don't need to be detained and aren't a threat to  
14 our society or a flight risk.

15           There is a huge need for outside monitoring  
16 of this entire system. And it can't be within the  
17 Department of Homeland Security because that's not  
18 really outside monitoring. And the monitoring also  
19 needs to be transparent.

20           So while there is -- the American Bar  
21 Association, the UNHCR do do visits to detention  
22 centers and have private confidential meetings with  
23 ICE where they report problems, and some of those  
24 problems may get resolved -- I absolutely have no  
25 idea, so I wouldn't say they haven't been

0159

1 resolved -- that isn't public.

2           There's no way to track that or follow up  
3 with that. And these systemic problems that have  
4 been ongoing for a long time certainly haven't been  
5 resolved.

6           I wanted to flag, too, what was said in the  
7 previous panel. I also have experience with lawyers  
8 being fearful about reporting any kind of problems  
9 in ICE detention for fear of retribution on their  
10 clients.

11           And they speak from experience when they  
12 relay that the last time they did that, their client  
13 was transferred away from them and they work for a  
14 nonprofit organization and can't represent somebody,  
15 you know, several hundred miles away from where  
16 they're located.

17           I also want to flag that -- okay. So I  
18 guess what I want to end with is sort of solutions  
19 that I know people have been asking for and  
20 recommendations on how to improve the situation. I  
21 have several in my written testimony.

22           But I think this needs to be flagged about  
23 how these folks don't have any access to legal  
24 resources, and something needs to be done about  
25 that.

0160

1           The ideal, which isn't going to happen, is  
2 for Congress to find a right to appoint a counsel  
3 for these folks. But there are other more moderate  
4 steps that could take place. There are legal  
5 orientation programs, and Iliana is going to speak  
6 about that after me.

7           These are programs that exist for about 20  
8 percent of the detained population, where lawyers  
9 and paralegals give presentations to everybody in  
10 the detention center about their legal rights. It's  
11 a way for people also to screen people to determine  
12 who may have relief available and match them with  
13 pro bono lawyers.

14           This is a great program and it should be  
15 immediately expanded to all detainees across the  
16 United States since it doesn't require congressional  
17 action and that should happen immediately. So I  
18 would list that as a very high priority.

19           As I said before, the detention standards,  
20 those four axis standards need to be immediately put  
21 into regulation despite the fact that ICE does not  
22 want this to happen and is vehemently opposed to it.  
23 It must happen.

24           The -- ICE needs to -- probably Congress  
25 needs to appropriate more funding so that ICE can

0161

1 stop detaining people in remote locations.

2 ICE needs to stop transferring people who  
3 do have counsel. We've heard today that only about  
4 20 percent of people in detention have counsel. So  
5 it's really bordering on criminal to break that  
6 attorney-client relation which happens when people  
7 are moved around the country.

8 They need -- the standards for -- I mean,  
9 the guidance on paroling people from detention needs  
10 to be put into regulations. Alternatives to  
11 detentions need to be expanded so that that would  
12 decrease the detention population and people who by  
13 statute don't need to be detained wouldn't be  
14 detained.

15 And then I think that more training and  
16 OC- -- the Office of Civil Rights and Civil  
17 Liberties is pursuing this on the -- for guards in  
18 these facilities about who is -- who are immigration  
19 detainees, if this is a civil process, what their  
20 language, cultural, et cetera, experiences are,  
21 needs to happen. And there absolutely needs to be  
22 some kind of outside monitoring and accountability  
23 that's transparent in this whole system, because  
24 that is sorely lacking.

25 Thank you.

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1           CHAIRMAN WALTON: Thank you very much for  
2 your testimony.

3           Ms. Holguin?

4           MS. ILIANA HOLGUIN: Thank you.

5           Good afternoon, Commissioners. My name is  
6 Iliana Holguin, and I am the executive director and  
7 managing attorney for Diocesan Migrant & Refugee  
8 Services, a nonprofit organization located in  
9 El Paso, Texas, and the largest provider of free and  
10 low-cost immigration-related legal services in west  
11 Texas and southern New Mexico.

12           In addition to providing direct legal  
13 representation for immigrants in removal  
14 proceedings, DMRS has been contracted by the  
15 Executive Office for Immigration Review to  
16 administer the Legal Orientation Program, the LOP,  
17 at the ICE detention facilities within the El Paso  
18 district in an effort to assist detained individuals  
19 in immigration court proceedings by explaining their  
20 legal rights and options.

21           Many times the LOP is the only opportunity  
22 that detainees have to ask a nongovernmental  
23 official for information related to their particular  
24 case, for an explanation of the court system which  
25 they will soon be forced to navigate, and to express

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1 their concerns regarding the conditions of their  
2 detention or report any abuses that may have  
3 occurred while being detained.

4           Allowing nonprofit organizations and other  
5 third parties access to individuals in detention  
6 assures that a mechanism exists whereby detainees  
7 can report potential abuses to someone other than  
8 the custodian who may be the very person committing  
9 the abuses.

10           By providing an outside outlet to  
11 detainees, detainee fears of retribution and  
12 retaliation regarding abuse may be alleviated,  
13 resulting in a detainee's increased willingness to  
14 report potential abuses.

15           Informational initiatives and programs such  
16 as the LOP provide a good mechanism by which to  
17 ensure that information is efficiently disseminated  
18 to the detainee population in a timely and neutral  
19 manner.

20           The purpose of my testimony today is to  
21 describe the LOP, the manner in which the program is  
22 administered within the various ICE detention  
23 facilities, and to provide the Commission with data  
24 regarding the numbers of detainees impacted by the  
25 program.

1           Since 2003, EOIR has administered the LOP  
2 at ICE adult detention facilities throughout the  
3 country in an effort to improve judicial efficiency  
4 and assist all parties involved in the removal  
5 proceedings of detained immigrants.

6           While the LOP does not provide for direct  
7 legal representation, it offers access to legal  
8 information and pro bono services to individuals in  
9 removal proceedings at the various program sites.

10           Currently, six LOP sites are operational at  
11 adult detention facilities across the country: in  
12 Arizona, Texas, Washington, California, and  
13 Colorado.

14           In fiscal year 2005, more than 20,000  
15 detainees, nearly 25 percent of all detainees who  
16 appeared before EOIR immigration judges, were served  
17 by these six sites.

18           A recent expansion of the program to six  
19 more adult sites will mean a drastic increase in the  
20 numbers of detainees receiving this service.

21           The LOP generally includes three  
22 components: an interactive, large group  
23 orientation; an individual orientation for  
24 individuals who have participated in the large group  
25 session and have specific questions for the

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1 prisoner; and, finally, a self-help component where  
2 individuals with potential relief from removal are  
3 referred to pro bono counsel or provided self-help  
4 materials and training through group workshops  
5 overseen by the LOP presenters.

6           Currently the ICE El Paso service  
7 processing facility houses approximately 900  
8 immigration detainees. LOP presentations are  
9 conducted at the SPC four days per week, and a  
10 self-help workshop is conducted once per week.

11           Unfortunately, we are currently only  
12 allowed to conduct presentations to individuals who  
13 are in immigration court proceedings and not to  
14 those who have already been ordered removed and are  
15 simply awaiting their removal.

16           This means that in reality, we only see a  
17 small percentage of the detainee population held at  
18 the facility.

19           One of the first statements at a large  
20 group orientation that is made by the LOP presenter  
21 to a detainee is an explanation that he or she is  
22 not a government employee and is not employed by  
23 either the immigration court or ICE but, rather, is  
24 a representative from an independent nonprofit  
25 organization.

1           This information is absolutely essential in  
2 order to establish a trust relationship with the  
3 detainees so that they will be comfortable asking  
4 questions of the presenter and sharing their  
5 particular -- the facts of their particular case  
6 during the individual orientations or in the small  
7 group, self-help workshops to follow.

8           The detainees are also informed, however,  
9 that the LOP presenter is not their attorney and  
10 will not be appearing in court with them. The LOP  
11 presenter does, however, present the detainees with  
12 a list of free legal service providers if they have  
13 not already been provided by ICE, as required.

14           The LOP presenter informs the detainees as  
15 to the typical course taken by a removal hearing,  
16 including explaining the role of the immigration  
17 judge and that of the government attorney who will  
18 be acting in an adversarial capacity.

19           The LOP presenter explains the various  
20 avenues of relief from removal that may be available  
21 to detainees. At this time detainees are also  
22 questioned as to whether they have ever been the  
23 victims of a crime and are told of the various  
24 remedies available to victims who have assisted in  
25 the investigation of certain criminal activity.

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1           After the presentation, detainees are  
2 invited to sign up for individual consultations,  
3 during which time more detailed information  
4 regarding the various relief applications may be  
5 given.

6           Self-help packets of information and  
7 application forms can also be distributed to  
8 detainees at this time or at a subsequent self-help  
9 workshop to be held at a later date.

10           The regular presence of an LOP provider at  
11 a facility not only benefits the detainees  
12 themselves, but the facility as a whole.

13           In general, the atmosphere at an LOP site  
14 as compared to a non-LOP site is much more calm as  
15 detainee anxiety levels tend to be lower in LOP  
16 facilities.

17           This has become apparent to our LOP  
18 presenter, who has observed a very noticeable  
19 difference between the detainee population at the  
20 El Paso SPC and two new privately run facilities  
21 housing overflow ICE detainees: The Albuquerque  
22 Regional Corrections Center and the Otero County  
23 Prison in Otero County, Mexico.

24           By October 2006, in addition to the 900 ICE  
25 detainees held at the El Paso SPC, 700 ICE detainees

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1 were held in Albuquerque, and another 200 ICE  
2 detainees were held at the Otero County Prison.

3 Because no nonprofit organizations in  
4 New Mexico are currently providing services to  
5 detainees in removal proceedings, DMRS has found  
6 itself having to find a way to deliver these much  
7 needed services to these remote facilities.

8 Providing services to detainees at the  
9 Albuquerque facility has proven to be the most  
10 challenging due to the facility's physical distance  
11 from our office in El Paso.

12 Upon arriving at our Albuquerque facility  
13 for the first time in November to conduct an LOP  
14 presentation, our LOP presenter very quickly became  
15 aware of the lack of information and understanding  
16 of their circumstances felt by the detainees.

17 Although a large room to be used for  
18 televideo immigration hearings and presentations is  
19 under construction, it has not yet been completed.

20 As a consequence, the LOP presentation was  
21 given in the center of the pod where the ICE  
22 detainees are held. Because an attendance list had  
23 not been generated by ICE or the facility, detainees  
24 were told that participation in the LOP presentation  
25 was voluntary.

1           While the majority of the detainees chose  
2 to participate, many did not and went about their  
3 daily activities within the pod. This meant that  
4 many detainees were utilizing the pod's restroom and  
5 shower facilities which were adjacent to and within  
6 full view of the pod where the presentation was  
7 being given.

8           While on average only 25 percent of  
9 detainees participating in the LOP presentations at  
10 the El Paso SPC elect to participate in individual  
11 orientations with the presenter, the number of  
12 individuals requesting individual information at the  
13 Albuquerque facility was much higher.

14           Most of the detainees expressed anxiety and  
15 frustration in not having been able to speak to  
16 anyone regarding their removal proceedings, even  
17 though some had been detained for several months.

18           Many even indicated that they were so  
19 desperate to leave the facility, that they were  
20 willing to forego any relief from removal that they  
21 may have been entitled to simply to be able to get  
22 out, even if it meant being separated from their  
23 families.

24           The presenter's experience at the Otero  
25 County facility was very similar to what occurred at

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1 the Albuquerque facility. Although our LOP  
2 presenter was able to use the facility cafeteria  
3 rather than the pod where the detainees were being  
4 housed, the presentation was difficult to conduct  
5 because the detainees were forced to return to their  
6 pods repeatedly to comply with counting  
7 requirements, which disrupted the presentation as a  
8 consequence.

9           Compounding the feelings of isolation and  
10 frustration and not knowing what is going to happen  
11 to them next, detainees are forced to feel even more  
12 isolated due to their limited ability to communicate  
13 with family, friends, and potential legal  
14 representatives by telephone.

15           Because of the frequent distance between  
16 the two New Mexico facilities and the detainees'  
17 families and friends, the telephone is often the  
18 only way the detainees have to communicate with  
19 anyone other than facility staff.

20           If a detainee's access to a telephone is  
21 limited, it becomes even more likely that concerns,  
22 frustrations, and reports of abuse will not be  
23 reported.

24           I won't go into detail about the issues  
25 with the telephones at these two facilities as

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1 Ms. DeConcini already mentioned the problems that  
2 we're seeing. But I will say that I myself went to  
3 the Albuquerque facility to try the telephones after  
4 receiving numerous complaints from detainees that  
5 they could not get through.

6           The instructions on how to make a call to  
7 one of the providers on the list of free legal  
8 services were so complicated, however, that I wasn't  
9 even able to make the phone call without having to  
10 seek assistance from the program director of the  
11 facility who happened to be standing next to me.

12           She also, though, had problems making that  
13 phone call and had to listen to the instructions  
14 several times.

15           As for the telephone access at the Otero  
16 County facility, that facility really isn't even in  
17 compliance with the detention standards in that  
18 there are no preprogrammed free calls allowed to  
19 even the service providers on the list of free legal  
20 services, as there should be.

21           In my written testimony I relate the story  
22 of a client of ours that was sexually assaulted by  
23 the Border Patrol agent that arrested her at the  
24 time of her attempted entry into the United States  
25 in October of 2004.

1           Although she finally broke down and relayed  
2 her horrific experience to a deportation officer at  
3 the El Paso facility, she did so after having been  
4 detained for a period of time by an agency that  
5 employed the very agent that had assaulted her.

6           I believe that had the LOP been in place,  
7 as it is today in the facility, our client would  
8 have disclosed her victimization much sooner,  
9 particularly since a section of the LOP specifically  
10 addresses remedies available to victims of violent  
11 crime.

12           In closing, I would like to stress to the  
13 Commission that access to independent nonprofit  
14 organizations, both in person and via telephone, is  
15 absolutely critical to establishing and maintaining  
16 the ability of the detainee population to report  
17 abuses so that appropriate action is taken.

18           Without access to nongovernmental,  
19 nonfacility personnel, detainees will be much less  
20 likely to report any potential abuses and may not  
21 even be aware that the abuses that have occurred are  
22 in violation of law and that the detainee will be  
23 protected if he or she comes forward.

24           Nonprofit organizations with regular access  
25 to detainees in an appropriate setting can

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1 facilitate this necessary exchange of information.

2 Informational initiatives such as the LOP  
3 have demonstrated that they have the capacity of  
4 reaching hundreds of detainees per month and of  
5 relaying vital information that detainees are often  
6 unable to obtain elsewhere.

7 That concludes my testimony. Thank you.

8 CHAIRMAN WALTON: Thank you very much for  
9 your testimony.

10 Ms. Tosado, let me just ask.

11 The limitation that was indicated by  
12 Ms. DeConcini that your office has over ICE, is that  
13 a legislative limitation or is that an internal  
14 limitation imposed in the department itself?

15 MS. REBEKAH TOSADO: Well, I'm not sure I  
16 would necessarily describe it as a limitation. Our  
17 statute does not state that we have -- we don't have  
18 any remedies to provide. So you might interpret  
19 that as a limitation.

20 The Office for Civil Rights and Civil  
21 Liberties -- the head of my office sees our mission  
22 to be integrated with ICE and collaborate with them  
23 in order to promote a culture of respect for civil  
24 rights and civil liberties, and he feels the best  
25 way to do that is to work together, not

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1 antagonistically or in a litigation mode.

2 CHAIRMAN WALTON: Well, does that lack of  
3 authority over them impede your ability to have them  
4 implement things that you all think is appropriate?

5 MS. REBEKAH TOSADO: Well, I would say that  
6 we have authority to make recommendations and --

7 CHAIRMAN WALTON: Have those  
8 recommendations been followed?

9 MS. REBEKAH TOSADO: Recommendations are  
10 followed. In some instances -- I don't have a --  
11 our recommendations are taken in most instances.

12 CHAIRMAN WALTON: The standards that have  
13 not been adopted -- I don't want to put you on the  
14 spot and say whether you are in favor of them or  
15 not.

16 But has any explanation been given by ICE  
17 as to why they're reluctant to adopt those  
18 standards?

19 MS. CHRISTINA DE CONCINI: You mean put  
20 them in regulation.

21 CHAIRMAN WALTON: Put them in to  
22 regulation, yes.

23 MS. CHRISTINA DE CONCINI: Right. They  
24 have obviously adopted them.

25 Well, yes, absolutely. The answer are --

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1 the first is that we already have well-established  
2 compliance and monitoring units, and they do, in  
3 fact, have that.

4 And they're beefing that up and spending  
5 more money on that, have more people and more  
6 checklists. And when you meet with them, they tell  
7 you that they're in compliance in general. And they  
8 feel that putting them in regulations would hinder  
9 them in some way.

10 But I think -- it's not unusual that they  
11 wouldn't want them to be in regulation. And that  
12 shouldn't be the determining factor of whether they  
13 become regulation.

14 If you work for an agency and you're their  
15 general counsel or somebody else, you might not want  
16 more regulations that are going to force you to act  
17 within confines and it could be enforceable.

18 They don't say that's the reason. They say  
19 that it would impede their ability to contract with  
20 people and operate. And they also do feel that  
21 they're doing a very good job of this.

22 And to tell you the -- the disconnect  
23 between folks at the headquarters and in the field  
24 is remarkable, because I do believe the people are  
25 genuine in their statements of -- and the money that

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1 they're spending, the compliance units that they've  
2 set up and the checklists that they have in trying  
3 to make these operational.

4 But -- I didn't know about the New Mexico  
5 situation, but when I read that, sitting back here,  
6 it's so unsurprising because I've -- I've yet to go  
7 to a place where the phones are in compliance. And  
8 the only place that I did go when they were in  
9 compliance was a facility in Florida, but there was  
10 no signage explaining that.

11 So I asked this guy, the guard there, and,  
12 yes, in fact, if you pushed star 13, it reached --  
13 it did actually call FIAC, where Cheryl Little  
14 works, but there was no sign in any language telling  
15 you that, you know. And that's -- and I don't claim  
16 to have been to all the detention facilities.

17 So it is an ongoing situation that hasn't  
18 resolved itself, and I don't think it's going to  
19 resolve itself unless those standards get put into  
20 regulations so that there will be some enforcement  
21 on the ground when they're not being followed.

22 CHAIRMAN WALTON: I think getting  
23 outside -- some outside agency having some type of  
24 authority is going to be a tough sale.

25 Is there any way that some internal

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1 mechanism would be able to at least improve what ICE  
2 does?

3 MS. CHRISTINA DE CONCINI: Well, you know,  
4 actually, the previous assistant secretary of ICE,  
5 Michael Garcia -- we were in conversation with him  
6 about could they make -- could they revisit this ABA  
7 detention standard monitoring? Could they revisit  
8 the idea that it has to be confidential so that  
9 other people could track it?

10 Not with the goal of running to the press  
11 or doing something that would harm ICE, but just  
12 with the goal of seeing, let's see, they made a  
13 complaint that no jail in Chicago that houses ICE  
14 detainees is in compliance with the telephone  
15 standard. We can see that was made.

16 And then we could go back to -- we could --  
17 instead of ICE saying, that's not a problem -- it  
18 turns out to be this he said/she said thing.

19 We say, the next one I'm going to take to  
20 them is this Albuquerque thing.

21 They'll say, we called them. It's in  
22 compliance. That's what they'll say. That's what  
23 they say every single time.

24 I have been with them in a facility where  
25 I -- and this is in my testimony -- where they

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1 showed me the checklist, that the phones had just  
2 been checked off that they were preprogrammed.

3 And then when I picked them up to try it,  
4 you know, they're not preprogrammed.

5 So that would be one more minor step in  
6 terms of outside compliance verification and  
7 transparency if those could -- those kind of  
8 reports, the UNHCR and ABA, were not confidential  
9 and other people could track them. But that  
10 definitely would not take the place of the need for  
11 these standards to be in regulation so they can be  
12 enforced.

13 CHAIRMAN WALTON: Just one final question.

14 Who pays for this Legal Orientation  
15 Program?

16 MS. ILIANA HOLGUIN: It's funded by the  
17 Executive Office for Immigration Review. They have  
18 funding for the programs, and it's administered by  
19 the Vera Institute for Justice and then actually  
20 carried out by nonprofit organizations in the  
21 different locations where the facilities are.

22 CHAIRMAN WALTON: But it's just not enough  
23 money.

24 MS. ILIANA HOLGUIN: Yes.

25 So currently, even after the expansion

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1 there really is only 12 programs at adult facilities  
2 across the country to meet the needs of the -- I  
3 believe it was 26,000 individuals who are in  
4 detention.

5 MS. CHRISTINA DE CONCINI: It reaches  
6 approximately 20 percent of the detained population,  
7 and that is a huge step forward. A lot of us  
8 advocated for Congress to appropriate that money,  
9 which only first came online -- I can't remember  
10 what year, but a few years ago.

11 MS. ILIANA HOLGUIN: 2003.

12 MS. CHRISTINA DE CONCINI: 2003.

13 Before that, the only way these operated is  
14 if the shoestring nonprofits that Iliana and I have  
15 spent my life working in could figure out a way to  
16 also do rights presentations.

17 CHAIRMAN WALTON: Thank you.

18 MS. REBEKAH TOSADO: Mr. Chairman, I would  
19 also like to add that we feel that in addition to  
20 some of the complaint mechanisms, that we're able to  
21 have in place, is that the training of officers,  
22 corrections officers, at the different types of  
23 facilities and this is very important. My office  
24 has collaborated with ICE detention removal to  
25 develop a training. It's available to all

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1 corrections officers at all facilities on the  
2 detention standards itself.

3 This is just the first part of the  
4 training, and it focuses on the axis standards that  
5 Ms. DeConcini talked about. And we hope to see that  
6 ICE can develop a second part of the training in the  
7 years to come. And part of what we want to do is  
8 see how that training is effective.

9 CHAIRMAN WALTON: Thank you.

10 Commissioner Kaneb?

11 COMMISSIONER KANEb: Question to help  
12 educate me a bit. Some -- many of the commissioners  
13 may not need this.

14 What is the practical difference in  
15 operating a prison between standard and regulation?

16 MS. CHRISTINA DE CONCINI: Well, it's a  
17 huge difference. One is an internal guidance,  
18 meaning that ICE has chosen to issue guidance for  
19 its field. And it's not enforceable. You cannot go  
20 into a court of law and enforce -- have any  
21 enforcement mechanism at all versus an official  
22 regulation that's published in a federal register  
23 and becomes regulation is enforceable.

24 Actually, internal guidance, they're not  
25 even required to follow it. They are actually, in

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1 terms of the detention standard, publicly and  
2 statementwise and resourcewise committed to it.

3 But they can -- they could decide we're  
4 actually not interested in continuing with that  
5 guidance and just say, we're not going to do it.  
6 There's absolutely nothing that would prevent them.

7 I'm not worried that they're going to do  
8 that, but there's a -- it's a night-and-day  
9 difference. One is enforceable, and one's not the  
10 slightest bit enforceable in any way, shape, or  
11 form. And the agency itself could decide at any  
12 moment to follow it, follow parts of it, or rewrite  
13 the guidance. It's just a matter of writing  
14 guidance.

15 COMMISSIONER FELLNER: Can I ask a  
16 follow-up question connected to John's question?

17 Are the standards incorporated into the  
18 contracts with either state and local facilities or  
19 private? And if they aren't incorporated formally  
20 into the contracts, why not?

21 MS. CHRISTINA DE CONCINI: Do you want to  
22 answer that, or do you want me to?

23 COMMISSIONER FELLNER: Well, I would like  
24 both of you too, actually.

25 MS. CHRISTINA DE CONCINI: You go ahead.

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1 MS. REBEKAH TOSADO: I want to hear your  
2 response.

3 MS. CHRISTINA DE CONCINI: I want to hear  
4 yours first. Go.

5 MS. REBEKAH TOSADO: Actually, that's an  
6 excellent question that I would like to prepare more  
7 of a written response to because I would like you to  
8 have the information.

9 It's something we're looking at right now  
10 in my office to see what is -- what is the language  
11 in each of those agreements? It's something that's  
12 important to us.

13 Contract facilities -- sometimes the  
14 contracts that I have seen say you must comply with  
15 these detention standards, and it doesn't say all 38  
16 of them necessarily, but these.

17 So it might vary by the type of facility,  
18 but I would like to provide a better response and  
19 more full response.

20 CHAIRMAN WALTON: You will provide that,  
21 though?

22 MS. REBEKAH TOSADO: I would like to do  
23 that, yeah.

24 CHAIRMAN WALTON: How long will it take? I  
25 usually ask that in court, and then I issue an

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1 order.

2 MS. REBEKAH TOSADO: If you would give me  
3 an order, I would be happy to say that I was ordered  
4 to provide it.

5 CHAIRMAN WALTON: Can you do it within 30  
6 days?

7 MS. REBEKAH TOSADO: Certainly.

8 CHAIRMAN WALTON: Okay. I will order you  
9 to do it within 30 days.

10 COMMISSIONER FELLNER: May I ask that your  
11 response also --

12 COMMISSIONER KANEB: Wait a minute. Jamie,  
13 may I finish my question?

14 COMMISSIONER FELLNER: Let me just follow  
15 on that what your response -- her --

16 Would you, when you give your answer, also  
17 explain to the extent that there are in the  
18 contracts any requirements, what are the  
19 consequences for not complying with it?

20 Because my own review in other contexts  
21 with contracts with private facilities is they  
22 violate -- I saw this at Elizabeth -- they violate,  
23 they violate, there are endless conversations, they  
24 violate, they violate, there are endless  
25 conversations, and eventually maybe somebody will

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1 lose their job, or not, but it -- contract  
2 enforcement.

3 So I have two questions, then: One, are  
4 they in the contracts? And, two, how do you enforce  
5 the contracts?

6 And then, John, sorry for wanting to make  
7 sure that that was included.

8 MS. CHRISTINA DE CONCINI: I want to  
9 respond to that too.

10 COMMISSIONER FELLNER: No. John won't  
11 let -- won't speak to you.

12 CHAIRMAN WALTON: Commissioner Kaneb.

13 COMMISSIONER KANEB: I'll speak to you, I'm  
14 sure. Fine. I'm listening. I'm learning.

15 Then there -- if I understood you  
16 correctly, Ms. DeConcini, there were -- are four  
17 standards that you believe it is extremely important  
18 to have converted to regulations. And that's  
19 somewhere in here, right?

20 MS. CHRISTINA DE CONCINI: Yes. It's in my  
21 testimony. And there -- what -- they're kind of  
22 dubbed --

23 COMMISSIONER KANEB: I read your testimony.

24 MS. CHRISTINA DE CONCINI: The ABA  
25 standards, they're on visitation --

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1           COMMISSIONER KANEB: I must not have paid  
2 attention to that.

3           MS. CHRISTINA DE CONCINI: Yes.

4           Visitation, which covers legal visits; the  
5 phone standard, which, as I've said, is many times  
6 the only way a person can access a lawyer; the law  
7 library standard; and the legal orientation or know  
8 your rights standard that provides for that.

9           I wanted to very briefly answer  
10 Ms. Fellner's question.

11           The headquarter's response is that they are  
12 in all the contracts. The headquarter's response is  
13 also that we sometimes won't contract with a  
14 facility if they can't meet our standards and that  
15 we've actually -- that they're sort of a burden and  
16 sometimes place us in a tricky situation where we  
17 can't contract with facilities.

18           A couple contracts that I've seen through  
19 FOIA have what Ms. Tosado has said, where it says  
20 the detention standards are part of this.

21           And then I know that Mr. Lonagan has  
22 informed me that he's seen some where they're  
23 absolutely not part of the contracts.

24           And I don't claim to have seen, like, a  
25 huge number of these, just a handful.

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1                   COMMISSIONER KANEB: I'm through for the  
2 moment.

3                   Thank you.

4                   CHAIRMAN WALTON: Commissioner Struckman-  
5 Johnson?

6                   COMMISSIONER STRUCKMAN-JOHNSON:  
7 Ms. DeConcini, going beyond the judge's opinion of  
8 it perhaps being too hard to accomplish, I'll ask  
9 anyway.

10                  If you could envision an outside monitoring  
11 oversight system, what would you envision?

12                  MS. CHRISTINA DE CONCINI: I haven't spent  
13 a lot of time on that, and I should.

14                  But I think that a nongovernment entity  
15 would be -- that doesn't -- you know, that doesn't  
16 seem to have a bias in it would be a useful entity.  
17 That's why I think to report -- to be able to have  
18 access to the facilities and be able to look at just  
19 those four standards on a regular basis and be able  
20 to report.

21                  Maybe initially report in some kind of  
22 closed, not "New York Times" front page initial  
23 response and give the agency some kind of fair and  
24 adequate time to try to address those since the idea  
25 is actually compliance, not creating an antagonistic

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1 relationship with folks.

2 But then if those things weren't remedied,  
3 that that could be made public so that there would  
4 be accountability because there is sorely lacking  
5 accountability.

6 And, as I said, it's not the people that  
7 work in Ms. Tosado's department that are the  
8 problem. It's that her department isn't -- I mean,  
9 her office within the department doesn't have that  
10 role.

11 CHAIRMAN WALTON: What if they were given  
12 that role?

13 MS. CHRISTINA DE CONCINI: I don't think  
14 within -- I don't think anybody within DHS would --  
15 in my opinion, would qualify as having enough of an  
16 outside take on this to be able to move this  
17 forward.

18 Because really, quite honestly, there are  
19 many people in ICE headquarters who do express great  
20 commitment to having this carried out.

21 And I believe that they believe that it is  
22 being carried out just because of the passion and  
23 commitment and money they keep spending on expanding  
24 the detention compliance resource center, staff that  
25 they hire, and their investment in this.

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1           So I just -- I feel like that within the  
2 agency itself, it's not going to be able to do that.  
3 And that goes to some of the things that were said  
4 earlier today.

5           And I also have a great deal of respect for  
6 a lot of people who do work in ICE on all levels,  
7 and then the department too. But there is, sort of,  
8 some of the cultural issues that have been brought  
9 up here today that it's too much of sort of the --  
10 what's the analogy of the fox watching the hens or  
11 whatever the -- whatever that analogy is.

12           CHAIRMAN WALTON: The henhouse.

13           MS. CHRISTINA DE CONCINI: Henhouse, right.

14           CHAIRMAN WALTON: Commissioner Struckman-  
15 Johnson?

16           COMMISSIONER STRUCKMAN-JOHNSON: Who would  
17 it be?

18           MS. REBEKAH TOSADO: If I could respond as  
19 the fox.

20           We -- when carrying out investigations when  
21 there have been allegations of abuse or violations  
22 of detention standards at detention facilities, we  
23 use independent experts. They're professional  
24 experts that have testified on behalf of the  
25 facilities and against the facilities.

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1           So we think we bring a level of objectivity  
2 and bias to our reviews. Of course, our goal is to  
3 work with our colleagues, and they are our  
4 colleagues, and help them improve their agency.

5           So I think that we do have the ability to  
6 do a robust oversight and monitoring if we had more  
7 staff and resources.

8           CHAIRMAN WALTON: Anything else?

9           Commissioner Fellner?

10          COMMISSIONER FELLNER: Two questions.

11          One is just a point of information.

12          I assume from your comment that you don't  
13 get ahold of these contracts except through FOIA.  
14 They're not publicly available.

15          MS. CHRISTINA DE CONCINI: That's -- to the  
16 best of my knowledge, yes. And I know people have a  
17 hard time getting them through FOIAs. And when  
18 people have just requested them, they have not been  
19 just handed over.

20          But -- and sometimes on a local level, I  
21 think a person might be able to get ahold of one  
22 here or there.

23          COMMISSIONER FELLNER: But that's something  
24 we should consider about the -- that we should have  
25 more transparency just in the relationship.

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1           But I want to go to the fact that I gather  
2 from what I've read that the standards themselves  
3 don't specifically address anything to do with  
4 either sexual violations in reporting or other  
5 violations, physical abuse; that they don't talk  
6 about prevention or response and don't put any  
7 specific burdens on the facilities who are housing  
8 detainees who are in the Federal Government's  
9 responsibility.

10           And I wonder, is that true, or could you  
11 talk about it, what the standards do say with regard  
12 to that? Either you or Ms. Tosado.

13           MS. CHRISTINA DE CONCINI: You know, I  
14 don't know the answer to that. I am -- and I said  
15 this early on when I was contacted, that, you know,  
16 my expertise is really within these four  
17 standards --

18           COMMISSIONER FELLNER: Fine.

19           MS. CHRISTINA DE CONCINI: -- as opposed to  
20 the others.

21           I could look it up easily because I have  
22 them in my office, but I don't know the answer.

23           COMMISSIONER FELLNER: Well, I wondered  
24 also because it would be not just what the standards  
25 but then how compliance is working and how they're

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1 doing it and how are these facilities, from your  
2 perspectives, handling the problem of sexual or  
3 other forms of physical abuse by staff.

4 MS. REBEKAH TOSADO: Well, I would say that  
5 in terms of assault, there are standards that  
6 address -- there's a disciplinary code standard in  
7 this pamphlet that I provided you as part of my  
8 testimony.

9 COMMISSIONER FELLNER: Uh-huh.

10 MS. REBEKAH TOSADO: It talks about  
11 engaging in sexual acts, making sexual proposals,  
12 indecent exposure, using abusive or obscene language  
13 and sexual assault.

14 So there's some reference to sexual assault  
15 in the detention standard. There's not a  
16 stand-alone detention standard that talks about what  
17 it is and what prohibitions there are and what their  
18 response should be. So there isn't a stand-alone  
19 standard, but there is --

20 COMMISSIONER FELLNER: Is there a standard  
21 that talks about the need to establish confidential  
22 reporting mechanisms so that victims can come  
23 forward?

24 MS. REBEKAH TOSADO: No, there isn't. I'm  
25 not aware of one, I should say.

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1           COMMISSIONER FELLNER: Okay. In your  
2 experience, would that be -- I'm sure you've gotten  
3 sexual abuse complaints or reviewed them.

4           Do you think that's something that needs to  
5 be put into place?

6           MS. REBEKAH TOSADO: I think  
7 confidentiality is important. The pamphlet does  
8 speak to that.

9           COMMISSIONER FELLNER: But it's not  
10 required that the facilities provide it. You say  
11 they can report to staff. Yet if the staff are the  
12 ones that are abusing them, how could you possibly  
13 think someone who's being -- let's take the  
14 situation that we've heard about this morning.  
15 You're going to say she should go to staff? I mean,  
16 she happened to have a lawyer there.

17           I just want to explore your own perception.  
18 I realize it's -- but you're under oath. You have  
19 to talk to us.

20           MS. REBEKAH TOSADO: But I am representing  
21 the agency and my office. So I think without -- I  
22 hate to use bureaucratic language, but I think  
23 without further consultation with counsel and other  
24 folks in my office, I don't think I would be able to  
25 give you an opinion on that issue.

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1           But I do think that confidentiality is  
2 important, and there needs to be a mechanism for  
3 people to feel that they can report in confidence  
4 and there won't be retaliation.

5           COMMISSIONER FELLNER: Well, for the  
6 record, although we will look forward to hearing  
7 more from you, I think it's something the Commission  
8 will look very closely at. We're looking at it for  
9 other facilities, and I see no reason or I've heard  
10 no reason today why the obligation to have  
11 confidential reporting mechanisms shouldn't exist  
12 within immigration facilities as with any other.

13           MS. REBEKAH TOSADO: Okay.

14           COMMISSIONER FELLNER: I had one final  
15 question for you.

16           You mentioned in your written testimony,  
17 Ms. Tosado, that you had prepared an internal  
18 report, you carefully said, on the treatment of  
19 unaccompanied minors.

20           I assume by your saying that it's internal,  
21 you mean it's confidential?

22           MS. REBEKAH TOSADO: Yes. It's protected.

23           COMMISSIONER FELLNER: Can you tell us what  
24 it says with regard to sexual abuse, the prevention,  
25 treatment, response, impunity, whatever, about -- of

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1 sexual -- of unaccompanied minors in that report?

2 MS. REBEKAH TOSADO: It doesn't address  
3 that. The report was the response to an  
4 investigation that our office conducted regarding  
5 conditions of detention and abuse of minors in  
6 immigration custody. The allegation did not include  
7 any allegations of sexual assault.

8 COMMISSIONER FELLNER: So you were looking  
9 into the conditions under which children were  
10 confined, and you did not come across any concerns  
11 about sexual violence or abuse?

12 MS. REBEKAH TOSADO: Well, no, we didn't.

13 And I will talk in my testimony later about  
14 what DHS responsibilities are with respect to care  
15 and protection of unaccompanied minors. I think  
16 there was some confusion.

17 The earlier panelists talked about abuse in  
18 an OIR facility, which is Department of Health and  
19 Human Services, and not Homeland Security, which no  
20 longer has responsibility and authority to house --

21 COMMISSIONER FELLNER: Right. But in that  
22 report that you did, you did not look into or you  
23 did not find?

24 MS. REBEKAH TOSADO: We did not look into  
25 it nor did we find. If we go on site and we see an

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1 issue or concern, we will look further. But we did  
2 not see such a concern when we went on site.

3 COMMISSIONER FELLNER: Thank you.

4 CHAIRMAN WALTON: If you can have that  
5 consultation with the others in your office and if  
6 you're able to respond to that question, that would  
7 be helpful.

8 And the information you were asked about,  
9 Ms. DeConcini, if you could provide us with that,  
10 you can, I'm sure, do that within 30 days. The  
11 information Commissioner Fellner was asking about  
12 regarding --

13 COMMISSIONER FELLNER: I would be  
14 interested --

15 MS. CHRISTINA DE CONCINI: On what the  
16 detention standards contained?

17 COMMISSIONER FELLNER: Well, you are able  
18 to talk because you don't have to check back with  
19 your offices. I would be interested in both you and  
20 Ms. Holquin's notions as to whether or not there  
21 should be standards.

22 Assuming for the moment that there are not.  
23 Should there be standards governing such questions  
24 as confidential reporting, steps that people  
25 receiving and being paid -- you have to under- -- as

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1 I'm sure all the other commissioners know, they're  
2 being paid to house these. It's a great business  
3 for local jails and prisons to get these federal  
4 detainees. They make a lot of money because they're  
5 paid far more than it, in fact, costs them to house  
6 detainees.

7 So they're being well paid for this.

8 Do you think there should be standards --  
9 let's assume there are not for the minute, and  
10 you'll check. But should there be standards that  
11 govern the prevention and response to sexual abuse,  
12 and, if so, do you have some thoughts what those  
13 standards might be?

14 Either one of you or both of you.

15 MS. CHRISTINA DE CONCINI: I would say yes.  
16 And they should be in regulation. That's the first  
17 thing. And they do need to cover confidentiality.  
18 And they need to cover language issues. And there  
19 needs to be some kind of safe person to report to.

20 On a nonsexual abuse situation, this is  
21 just a tiny glimpse of how difficult it is for these  
22 people. That's why when you say you haven't found  
23 any of this -- I've represented detainees who have  
24 told me, I haven't been able to make a phone call  
25 because my address book is in lockup.

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1           And I'll say, well -- so let's find out how  
2 we can get that out.

3           And the answer is you have to fill out this  
4 form to get it out of lockup. But without me there,  
5 they wouldn't know about that form. And they don't  
6 speak English or write English. So they're not  
7 going to be able to get the address book.

8           Now, that's a benign situation, and I just  
9 think it -- I only throw it out there just to  
10 underscore how almost impossible it is going to be  
11 for somebody to -- this is just somebody trying to  
12 get their own property in a situation where they  
13 don't speak the language and they're from a country  
14 where a lot of times, not always, but -- you know,  
15 asking for anything can cause more problems,  
16 especially a person fleeing an oppressive government  
17 and what have you that has never thought that a  
18 person might have rights.

19           MS. ILIANA HOLGUIN: And I agree  
20 completely. There do need to be mechanisms that  
21 would allow someone to report the abuse  
22 confidentially without necessarily having to go back  
23 to the same agency or company that employs the  
24 person committing the abuses.

25           But I think there also needs to be more

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1 oversight by the ICE facilities who are in charge of  
2 the contract facilities that they're contracting  
3 with.

4           For example, here in El Paso, the El Paso  
5 office has jurisdiction over the Albuquerque  
6 suboffice, which then has jurisdiction over the  
7 Albuquerque facility.

8           But in El Paso we frequently brought up the  
9 problems with the phones, and the answer that we  
10 got -- as Ms. DeConcini said, the answer is always,  
11 well, we called them already, and they are in  
12 compliance. They say that they are in compliance.

13           So I think a lot of times the main ICE  
14 office responsible for overseeing these contract  
15 facilities also doesn't know what's happening at the  
16 facilities.

17           And just to touch on an issue that I think  
18 was previously mentioned was -- the question was  
19 whether or not the detention standards are included  
20 in the contracts. And Ms. DeConcini mentioned that  
21 sometimes she's heard that maybe on a local level,  
22 organizations are able to get the copies of the  
23 contracts. But this was a point that was mentioned  
24 earlier.

25           As nonprofits providing these services, we

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1 walk a really fine line where, if we start asking  
2 too many questions and making too many demands, we  
3 risk being refused admission into the facilities to  
4 provide these same services.

5 So in a way we feel that we can only  
6 advocate for our clients to a certain extent without  
7 being faced with the possibility of no longer even  
8 being allowed access to them.

9 COMMISSIONER FELLNER: One final question,  
10 Jim, if it's okay.

11 Do you know whether the standards -- and if  
12 they don't, should they -- include requirements for  
13 sexual abuse training of the staff? We've talked  
14 about and heard a lot about the importance of and a  
15 lot of the work under PREA in prisons -- especially  
16 prisons and some in jails has involved training  
17 staff, both in terms of their own, how to deal with  
18 inmate-on-inmate or detainee-on-detainee abuse but  
19 also with regard to their own responsibilities.

20 Do you know whether facilities receiving  
21 federal detainees and who are being paid for that,  
22 the detention services they are providing are under  
23 any obligation to ensure that their staff receive  
24 training on sexual abuse, the prevention, and the  
25 response thereto?

0200

1 MS. REBEKAH TOSADO: All of the ICE, SPCs,  
2 which are the service processing centers, all but  
3 one, which is the facility in Aguadilla, are  
4 accredited by the ACA, the American Correction  
5 Association. And the ACA requires that there be  
6 training regarding sexual assault.

7 I do not know very much about that  
8 training, what the content is, but I would be  
9 interested to get some more information on that and  
10 learn some more from it as well.

11 COMMISSIONER FELLNER: Could that be added  
12 to the 30-day list?

13 No -- what your office is looking for, I'm  
14 sure you have the same concerns we do, to make sure  
15 that the staff are properly trained. And I would  
16 want to know what kind of monitoring your office  
17 does to make sure that the training is provided.

18 MS. REBEKAH TOSADO: We haven't done any.

19 And to this point, really, as I was  
20 speaking to some of the participants here in the  
21 hearing today, the issue has not been raised with us  
22 in the past.

23 We meet with a coalition of NGOs and  
24 Ms. DeConcini is the chairman of those commissions  
25 and we have regular meetings and have phone calls

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1 with advocates around the country. And it really  
2 has not been brought to our attention that this is  
3 an issue of concern within immigration detention.

4 And perhaps a lot of it has to do with the  
5 reporting or that there are mechanisms in place for  
6 protections. But I can see from the testimony today  
7 that there are -- populations are vulnerable and  
8 there is sexual assault, so this is a good  
9 opportunity for us to start working on this issue  
10 and perhaps do some more on training and looking  
11 into training.

12 COMMISSIONER FELLNER: All that happened in  
13 Krome, which we've heard about.

14 MS. REBEKAH TOSADO: Of course. We're  
15 Homeland Security, and our office only came into  
16 being in 2003. And that in Krome was in 1990.

17 COMMISSIONER FELLNER: It continues -- as  
18 what Ms. Little was saying, it continues in Florida  
19 today. So I'm surprised it hasn't been raised, but  
20 I think we should consider it raised as a concern  
21 for training the staff.

22 MS. REBEKAH TOSADO: Absolutely, it should  
23 be. And that's why I'm here today taking  
24 information.

25 COMMISSIONER FELLNER: That's terrific.

0202

1 Thank you.

2 CHAIRMAN WALTON: Just one before

3 Commissioner Aiken asks his questions.

4 Ms. Holguin, your express concern about  
5 being excluded from facilities if you push too hard,  
6 is that based upon something real that's happened  
7 that would cause you to have that feeling, or is  
8 that based upon just a perception of what might  
9 occur?

10 MS. ILIANA HOLGUIN: A little bit of both.

11 We've actually only recently been allowed access to  
12 the Albuquerque facilities and the Otero County  
13 facilities.

14 So for a period of time, we were actually  
15 told that we couldn't have access to some of these  
16 facilities. So it has happened that we have been  
17 refused access. Now, thankfully, we are being  
18 allowed into the facilities.

19 But, also, it's a concern of, you know,  
20 what might possibly happen and an unwillingness to  
21 kind of take that risk and see that that actually is  
22 the ultimate result.

23 MS. CHRISTINA DE CONCINI: And I can speak  
24 to that a tiny bit too. When I worked at the  
25 Catholic Legal Immigration Network, they represented

0203

1 detainees around the country. And I know that on  
2 occasion this Louisiana facility, they would raise  
3 concerns with me.

4 And then I would say, okay, I'll take them  
5 to the headquarters.

6 And they would say, well, you better not do  
7 that because, you know, if we upset this sheriff,  
8 we're not going to be able to get back in here and  
9 he's told us that.

10 I also know there's reports in the  
11 Washington, D.C./Virginia area, people are detained  
12 in these remote jails in Virginia. And the care  
13 coalition that does the pro bono representation  
14 there did actually get kicked out of a facility. I  
15 can't remember for what the -- what it was that they  
16 complained about that resulted in that.

17 CHAIRMAN WALTON: Just some type of  
18 legislation that would mandate them having access  
19 would be helpful, I assume.

20 MS. CHRISTINA DE CONCINI: That would be  
21 very helpful.

22 COMMISSIONER FELLNER: Especially in  
23 Louisiana.

24 CHAIRMAN WALTON: Commissioner Aiken?

25 COMMISSIONER AIKEN: Mr. Chairman, how are

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1 we looking on time, sir?

2 CHAIRMAN WALTON: We've got about 15  
3 minutes.

4 COMMISSIONER AIKEN: Okay. I'll be brief  
5 as possible.

6 CHAIRMAN WALTON: Because we have until  
7 2:15, right?

8 Okay. We're good.

9 COMMISSIONER AIKEN: Okay. I do appreciate  
10 all of you appearing today. It's been very  
11 enlightening to me.

12 And I'm somewhat conceptual and very  
13 simplistic, so please bear with me.

14 Two issues that I'm focusing in on based on  
15 your testimony today is one of tracking and access.

16 And what I mean by "tracking" is finding  
17 where people are located within these facilities.

18 And I do understand that it's a very transient  
19 population. It's moving from Point A to Point B and  
20 C and on.

21 And then I look at that as being the  
22 fundamental responsibility of the confinement  
23 facility, to keep track of their people, the people  
24 that they have responsibilities for.

25 And that, in turn, creates some concern

0205

1 because if you're not tracking the physical body,  
2 you're not bringing the medical with that --  
3 information with that, i.e., diabetic, i.e., heart  
4 trouble, you know, all of those issues.

5           Is that important life-saving information  
6 being followed with that individual as they move  
7 from Point A to Point B?

8           And then you have safety concerns and  
9 separations and everything else to go with that.

10           And then I ask the question, well, if  
11 Fed Ex can keep a track of a package, you know, my  
12 wife can keep track of me, you know, and you can  
13 keep track of school kids in school and you can keep  
14 track of patients in hospitals -- the airlines don't  
15 do a good job on baggage, so we'll leave that to the  
16 side.

17           But, you know, tracking and knowing where  
18 people are and their status, medical status,  
19 security status, legal status, whatever, and then  
20 you mix with that the complexity of minors being  
21 moved around in this system causes the probability  
22 of misconnects that can cause some serious issues,  
23 whether it's related to sexual abuse and/or other  
24 security or medical related.

25           What have we done in relationship to

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1 technology, technology that has been proven, that  
2 has been used continuously, not only in confinement  
3 systems, but also in the other worlds to track  
4 people and make sure that we know where they are and  
5 that they're in the right place?

6           And number two is that, what have we done  
7 to provide accessibility, i.e., videoconferencing  
8 where you can schedule to see a client that's in  
9 Timbuktu from a video standpoint, whether it's in  
10 the back woods of Virginia and you are in  
11 Washington, D.C., and you know at 11 o'clock you are  
12 going to have an interaction with this client, where  
13 you don't have to go inside the institution, you  
14 don't have to, you know -- and it can be in a  
15 private line, if you know what I'm saying, or a  
16 confidential line.

17           I even know of court hearings being  
18 conducted in this manner. And we don't have to go  
19 through all of the gyrations and barriers in order  
20 to have a visual contact.

21           And why can't visitation, at least, be  
22 afforded individuals that don't have the ability to  
23 drive 200 or 300 miles to have a 20-minute visual  
24 back-and-forth with a person that's in confinement  
25 and the visiting family member?

0207

1           So I'm not advocating and I'm not trying to  
2    throw solutions at something that really I have not  
3    identified the problem. But I'm just throwing this  
4    out for your feedback and your analysis off the top  
5    regarding this.

6           MS. ILIANA HOLGUIN: Well, I'm glad that  
7    you brought up the issue of technology because that  
8    is something that we've actually been kind of  
9    looking into now that we are having these access  
10   issues with the Albuquerque facility due to its  
11   distance from El Paso.

12           At our office we actually do have the  
13   capability of having Internet-based  
14   tele-videoconferencing.

15           And when I went to visit the officials at  
16   the Albuquerque facility in October of this year to  
17   discuss bringing the LOP to them, I discussed with  
18   them the possibility of this tele-video, and they  
19   told me that they would have absolutely no problem  
20   doing that.

21           The problem, however, is that their  
22   facility is outfitted with the older technology, the  
23   phone-based teleconferencing or tele-video, which is  
24   how they connect to the court and are sometimes able  
25   to have tele-video hearings with the court in

0208

1 El Paso while the detainee is still in Albuquerque.

2           So the two systems aren't compatible. Our  
3 newer Internet-based system is not compatible with  
4 their older phone-based system. So that, which  
5 looked like a really exciting possibility, it kind  
6 of stopped in its tracks.

7           Now, they did say that they were in the  
8 process of building a -- or modifying a large room  
9 to provide educational types of services and that  
10 they would look into outfitting that room with the  
11 Internet-based tele-video so that we could provide  
12 some presentations that way and, thereby, not have  
13 to make the actual four-hour trip to Albuquerque.

14           COMMISSIONER AIKEN: Good news. I'm not a  
15 person that has a lot of knowledge in this area, but  
16 I have known that this -- to be a barrier. And my  
17 understanding is that there is a -- or will be a  
18 switching mechanism that will read and pick up the  
19 type of signal as well as the need, whether it's  
20 broadband or not, and automatically switch it over  
21 as necessary. And you may be able to pick it up at  
22 Radio Shack.

23           MS. ILIANA HOLGUIN: And that's our hope,  
24 that we'll be able to do that one day.

25           CHAIRMAN WALTON: Many of the federal

0209

1 institutions have teleconferencing technology. I  
2 have teleconferencing in my courtroom, and I can  
3 teleconference with inmates who are far away from  
4 the District of Columbia.

5 So it seems to me if we could do that in  
6 that capacity, that would aid you tremendously, if  
7 you were able to have teleconferencing sessions with  
8 detainees to explain to them what their rights are.

9 MS. ILIANA HOLGUIN: Yes, it would.  
10 Because theoretically what we had envisioned is that  
11 we would actually be broadcasting as -- an in-person  
12 LOP presentation as being conducted at the El Paso  
13 facility, that same presentation would be broadcast  
14 to the detainees in Albuquerque.

15 Obviously there would still be the need for  
16 us to make the trip to Albuquerque for the  
17 individual orientations, but at least if we could do  
18 the large presentations, that would save a  
19 considerable amount in resources.

20 MS. CHRISTINA DE CONCINI: I want to add  
21 something, that if the Commission does make any  
22 recommendations along those lines, many of us,  
23 myself included, have spent a great deal of time and  
24 are incredibly concerned about the Executive Office  
25 of Immigration Review -- which is the body where the

0210

1 immigration courts are housed -- are moving in a  
2 very rapid way towards having huge numbers of  
3 immigration hearings by videoconference.

4           And there's numerous due process issues  
5 raised by that where the detainee is far away in a  
6 detention center and is not with his counsel in  
7 court where his fate is being decided.

8           And in asylum applications and other  
9 things, a key finding must be the credibility of the  
10 individual before the judge. And there have been  
11 ample studies that show that that is much more  
12 difficult to do when the person is about this big on  
13 a TV screen far away. And then when you add in the  
14 language, the interpretation, et cetera.

15           So my caution is in terms of advocates  
16 using it to reach people that they would otherwise  
17 not have access to, I would like to alert you to and  
18 I could actually direct you to a lot of legal  
19 writing on this issue about the dangers and advocacy  
20 that's been done to try to curb the expansion of  
21 this, when, in fact, it's -- the Executive Office of  
22 Immigration Review is quite wedded to this, like it  
23 very much and have said that they are going to  
24 expand it as rapidly as they get resources to do.

25           CHAIRMAN WALTON: Well, my suggestion was

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1 not made in that context. It was only made in  
2 context to the Legal Orientation Program.

3 COMMISSIONER AIKEN: And, also, my  
4 statement was one of access.

5 MS. CHRISTINA DE CONCINI: Sure. I  
6 understand.

7 COMMISSIONER AIKEN: Okay. And not legal  
8 proceedings. And also tracking.

9 CHAIRMAN WALTON: Yes.

10 COMMISSIONER KANEB: You are all  
11 understandably concerned about what really matters  
12 most to people in detention centers, and that is,  
13 can I stay in the U.S. and how can I facilitate that  
14 goal? That's why they came here in the first place,  
15 and that's all understandable.

16 But we are, in fact, the prisoner rape  
17 elimination commission. And some of the things that  
18 you want done are things we would see, certainly, as  
19 bringing our hopes for a better world to reality,  
20 but not all of them.

21 And we'll try to do what we can so that the  
22 benefits can be to both your broader mission and our  
23 more narrow mission.

24 I would like to ask this of any or all of  
25 you.

0212

1           Do you all have any feeling about the  
2 prevalence of sexual abuse in detention centers  
3 generally, and particularly inmate-on-inmate sexual  
4 abuse, which is, in fact, perhaps the main problem  
5 we -- in the general prison population? We haven't  
6 found that to be the case yet, but it may well be.

7           So, frankly, we've heard an awful lot about  
8 problems, and a lot of them are very real and, you  
9 know, a couple -- or several very lurid and very  
10 disturbing true-life cases of sexual abuse. But I  
11 think -- at least I'm getting the feeling that as  
12 compared with state prison systems, things may not  
13 be nearly as bad in terms of sexual abuse.

14           And I may be wrong. And I'm just asking  
15 you all.

16           COMMISSIONER FELLNER: John, could you  
17 clarify if you mean inmate on inmate or staff on --  
18 I mean detainee or both? Are you asking about both?

19           COMMISSIONER KANEB: I mean both. I mean  
20 both.

21           COMMISSIONER FELLNER: Okay.

22           MS. CHRISTINA DE CONCINI: I would -- I  
23 don't know the answer, but I would disagree with  
24 that the conclusion -- because we don't know about  
25 this -- is that there's less of it than in the

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1 general criminal detained population.

2           Because my starting point is, is that these  
3 people are very differently treated than other  
4 people who are incarcerated in the United States,  
5 who every last one of them has had some contact with  
6 somebody who speaks their language, who represents  
7 them in the legal system. And they're also more  
8 likely to have been raised in this country where  
9 they're aware of their rights and the ability to  
10 report them.

11           I don't think you can underestimate what a  
12 disadvantage it is to be jailed and deprived of your  
13 liberty without any access to speaking to somebody  
14 on the outside.

15           And I really think that -- I hear what  
16 you're saying, that it hasn't come forth here. I  
17 personally don't know the answer to it. I wish I  
18 did know the answer. And I think that this  
19 Commission had a difficult time finding people who  
20 know a lot about this. And I don't claim to either,  
21 but...

22           COMMISSIONER KANEB: We haven't found  
23 anybody yet, actually, this meaning sexual abuse or  
24 the prevalence of sexual abuse. We have instances.

25           We're certainly going to look into it. If

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1 there is, you know, profit in research, we'll do it.

2 CHAIRMAN WALTON: I mean, I assume, as was  
3 indicated in the last panel, that you don't know of  
4 any empirical data that has made this type of  
5 assessment.

6 MS. CHRISTINA DE CONCINI: No, I don't  
7 myself.

8 COMMISSIONER FELLNER: Do you think it  
9 would be possible to do a survey? If you took, for  
10 example, your -- the facilities that you work with,  
11 could you imagine doing a survey or having a survey  
12 administered in Spanish to the current -- primarily,  
13 I guess, or not entirely Spanish, that would get  
14 through some of the cultural barriers and fears and  
15 resistance which are serious, so that one could, at  
16 least on a small scale, do some micro studies, or do  
17 you think the various barriers that we have been  
18 talking about all day, about vulnerability and  
19 whatnot, would make it even such an effort failed?

20 MS. ILIANA HOLGUIN: I think that we  
21 definitely could do a survey.

22 The issue would be exactly how many  
23 detainees we would be able to reach, because at none  
24 of the facilities that we service do we get to see  
25 all detainees.

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1           As I mentioned, at the El Paso facility, we  
2 only really get to see a small percentage because we  
3 only get to see the folks who are scheduled to  
4 appear in court the next day. That's how the lists  
5 are generated and provided to us.

6           So if a person isn't scheduled to appear in  
7 court the next day, we don't see him, and he or she  
8 could be transferred somewhere else before we ever  
9 get to see them.

10           A lot of folks we never get access to  
11 because they already have orders of removal and so  
12 never are even going to be able to go in front of an  
13 immigration judge.

14           As for the Albuquerque and the Otero County  
15 facility, we have only begun -- recently begun  
16 expanding the program to the facilities. And it's  
17 been -- there's been a lot of confusion and  
18 disorganization on the part of the actual facilities  
19 as to deciding how they get the detainees to us.

20           So, again -- for example, we're not allowed  
21 to see more than -- the maximum that Otero County  
22 has told us is 40 people at a time, when they're  
23 housing, you know, close to 200 or even more ICE  
24 detainees.

25           COMMISSIONER FELLNER: But presumably ICE

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1 could order the facilities holding its people to  
2 permit a survey instrument to be distributed to  
3 them.

4 I mean, Professor Struckman-Johnson is the  
5 expert on the panel here. I don't know what --  
6 Cindy?

7 COMMISSIONER STRUCKMAN-JOHNSON: Pardon?

8 COMMISSIONER FELLNER: We're talking about  
9 surveys.

10 COMMISSIONER STRUCKMAN-JOHNSON: Oh, yes.  
11 So are we.

12 COMMISSIONER FELLNER: I was just saying  
13 couldn't ICE order facilities to permit distribution  
14 of some kind of survey to the current existing  
15 population that day, for example? It wouldn't get  
16 everybody, but it would at least start creating some  
17 numbers.

18 MS. CHRISTINA DE CONCINI: I think the idea  
19 of a survey is great. I would ask you how you think  
20 you're going to get ICE to order anyone to carry out  
21 a survey when you can't -- when they can't get their  
22 own facilities to get their phones in compliance.  
23 But I think it's a great idea in terms of collecting  
24 data.

25 COMMISSIONER KANEB: Before Jamie answers

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1 that question, which I don't think she should, let  
2 me say -- let us pursue this. Okay.

3 I would respectfully suggest that at the  
4 Commission's meeting tomorrow we talk about this in  
5 some detail.

6 COMMISSIONER FELLNER: I was going to ask  
7 Ms. Tosado what she thought of the possibilities.

8 Could your office as part of this effort to  
9 understand what's going on --

10 MS. REBEKAH TOSADO: Sure. I think the  
11 idea of a survey -- the survey could bring more  
12 information to light in spite of all the obstacles  
13 we've talked about today, cultural, language, and  
14 the issues of having mistrust of corrections  
15 officers.

16 But I think I would encourage you to work  
17 collaboratively with ICE and the local officials  
18 rather than force them to deliver the survey. I  
19 think part of it is education, educating people in  
20 headquarters, educating people in my office, which  
21 is -- I consider this part, and educating the folks  
22 in the detention facilities about why you have an  
23 interest in doing this or why my office would have  
24 an interest in doing it.

25 CHAIRMAN WALTON: Okay. We need to stop.

0218

1 MS. ILIANA HOLGUIN: If I could just make  
2 one comment. I'm sorry.

3 We would be happy to volunteer to do that  
4 on a small scale, if the Commission would like us  
5 to, at our facilities.

6 CHAIRMAN WALTON: Okay. Thank you. We  
7 appreciate your input, and we may have additional  
8 questions. And if we submit them, we would ask that  
9 you respond. Thank you.

10 We'll take a 15-minute break. We'll start  
11 back at 2:30.

12 (Recess taken from 2:15 p.m. to  
13 2:29 p.m.)

14 CHAIRMAN WALTON: Okay. To stay on  
15 schedule, we'll get started.

16 Our final panel on immigration  
17 detention-related issues will address special issues  
18 pertaining to minors in immigration custody.

19 I would like to welcome our next three  
20 witnesses, Mr. Sergio Medina, Mr. Christopher  
21 Nugent, and, again, Ms. Rebecca Tosado.

22 In 2003, the Office of Refugee Resettlement  
23 took over the custody of unaccompanied minors who  
24 are apprehended by immigration authorities.

25 The experts on this panel will discuss the

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1 particular issues surrounding the custody of minors  
2 of all ages in immigration detention, what children  
3 experience at the border and as they move through  
4 the system, and the efforts that the Office of  
5 Refugee Resettlement has made to ensure their safety  
6 and well-being.

7           Mr. Medina is the field coordinator for the  
8 Southern California Office of Refugee Resettlement  
9 unaccompanied minors program through the Lutheran  
10 Immigration and Refugee Service, whose work involves  
11 ensuring that children in such facilities or  
12 shelters receive all necessary services.

13           Mr. Nugent is senior counsel for the  
14 Community Services Team of Holland and Knight, a law  
15 firm in Washington, D.C.

16           He has over 15 years of experience in  
17 immigration law and policy, including his previous  
18 tenure as a director of the American Bar Association  
19 Commission on immigration policy, practices and pro  
20 bono services.

21           And Ms. Tosado, who you had introduced to  
22 you earlier and spoke on our last panel, is from the  
23 Department of Homeland Security's Office of Civil  
24 Rights and Civil Liberties.

25           Again, I would like to thank all three

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1 witnesses for appearing today to present their  
2 testimony, and we'll proceed with Mr. Medina.

3 MR. SERGIO MEDINA: Thank you for the  
4 introduction, and since you introduce so well, I  
5 will skip saying who I am.

6 CHAIRMAN WALTON: I'm sorry. See, somebody  
7 always swears my witnesses for me in court, and I  
8 slip sometimes.

9 Could you stand, please, and take the oath.

10 Do each of you solemnly swear or affirm  
11 that the testimony you will provide to this  
12 Commission at this time will be the truth, the whole  
13 truth, and nothing but the truth, so help you God?

14 MR. SERGIO MEDINA: I do.

15 MR. CHRISTOPHER NUGENT: I do.

16 MS. REBEKAH TOSADO: I do.

17 CHAIRMAN WALTON: Thank you.

18 And thank you.

19 MR. SERGIO MEDINA: So I think we should  
20 start with defining what an unaccompanied alien  
21 child is. It's sort of a harsh term, but it really  
22 refers to a child who, one, has no lawful  
23 immigration status in the U.S., has not attained the  
24 age of 18 years, and with respect to whom there's no  
25 parent or legal guardian in the United States or no

0221

1 parent or legal guardian in the U.S. that is  
2 available to provide care or physical custody.

3           The ORR program for unaccompanied children  
4 was created in 2002 when the Homeland Security Act  
5 transferred responsibility of these children from  
6 the former INS to Office of Refugee Resettlement,  
7 which is ORR, which is a department within Health  
8 and Human Services.

9           As a result of the act, the approach to  
10 custody of these children was shifted from  
11 enforcement only to one based on child welfare  
12 principles.

13           Before going further, though, into sort of  
14 the setup of the program and who these children are,  
15 I think it's important to make the distinction about  
16 these children in light of the issues being  
17 researched by the Commission.

18           Most unaccompanied children do not fit  
19 easily into the category of persons that's the focus  
20 of this study of the Commission.

21           From my perspective, they are not prisoners  
22 or inmates. It would not be good to refer to most  
23 of these children as "detainees" as that word  
24 conjures up images of shackles and bars and  
25 jumpsuits, which was common when the program was

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1 operated under the former INS.

2           Thankfully, for a vast majority of these  
3 children in ORR care today, this is far from their  
4 experience. For example, over 30 percent of the  
5 children were treated as prisoners previously under  
6 INS. Now, only 3 percent of kids in the ORR program  
7 are in such lockdown facilities. The rest are in  
8 what we call basic shelter, and it's a shelter for  
9 children. The children have a lot of freedom of  
10 movement. They play. They go to school while  
11 they're there at the shelter. It's a very child  
12 friendly environment.

13           So, again, while they don't fit into the  
14 category that we sort of see as -- or consider what  
15 are inmates, I would like to share a few points  
16 about some of the obstacles these kids face and some  
17 of the positive developments I believe that make  
18 them less vulnerable to abuse.

19           The children with whom I work are  
20 vulnerable on a number of different levels.

21           Some of these children are victims of human  
22 trafficking, brought to the U.S. for sexual  
23 exploitation or forced labor.

24           Other children are smuggled into the U.S.  
25 on thousand-mile journeys, at each stop of the way

0223

1 at incredibly high risk for abuse and sexual  
2 exploitation.

3           Once in the U.S., a smuggler or trafficker  
4 may use what's called a "drop house" to hold the  
5 child and other individuals until they think it's  
6 safe to continue the rest of their journey.

7           The conditions in the drop houses are known  
8 to be deplorable with overcrowding, intimidation,  
9 and abuse -- direct abuse, physical and sexual.

10           When the Department of Homeland Security  
11 conducts a raid on a drop house, children there  
12 remain vulnerable. They may be lumped in with the  
13 smugglers or the traffickers and may not be given  
14 the chance to identify themselves as victims and ask  
15 for protection from Homeland Security.

16           From children who were caught at the  
17 border, I've heard that being apprehended by U.S.  
18 Border Patrol brings mixed emotions. Sometimes it  
19 signifies the end of a very long and often  
20 terrifying journey.

21           At the same time, you know, they're  
22 terrified, they're anxious, they're fearful about  
23 what's going to happen to them in the future and  
24 what this all means.

25           The stations that they're processed out,

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1 they're not designed to be centers of child care,  
2 and, you know, we give that weight. But there are  
3 ways that treatment of children at the Border Patrol  
4 stations can be improved by sensitizing the agents  
5 to what these kids have gone through and why they're  
6 coming here and now that they're there, how they can  
7 be -- can be treated in a more humane way.

8           When the children arrive in an ORR shelter,  
9 usually the basic shelter model is used for, you  
10 know, over 90 percent of the kids that are placed  
11 with ORR. They're often unclear as to the role the  
12 shelters play. And they arrive feeling skeptical,  
13 fearful, and mistrusting. It can take several days  
14 for these kids to realize that he or she is safe at  
15 the shelter.

16           During their time at an ORR shelter, a  
17 child receives several medical and psychosocial  
18 assessments. And these are required on a staggered  
19 time basis, with an immediate evaluation, a 24-hour  
20 evaluation, one at 72 hours, and then follow-up  
21 services thereafter.

22           And these tools are designed to give the  
23 providers a window into the overall functioning of  
24 this child to screen for child abuse, which would  
25 include any sexual abuse, had it happened before

0225

1 that child is placed there.

2 And it's also used to give the providers a  
3 first step in figuring out what sort of service this  
4 child may need.

5 Any indication that child abuse has  
6 occurred starts a chain reaction with referring the  
7 child for a medical evaluation, filing a child abuse  
8 report, and providing mental health trauma support.

9 And I should note here that each shelter  
10 that operates within ORR, they're governed -- they  
11 have to be licensed in the state in which they  
12 operate.

13 So a lot of the requirements that the  
14 shelter has to do in terms of reporting and  
15 different mechanisms for that are governed by the  
16 state laws within that state. So they can vary from  
17 state to state. But California, for one, is one of  
18 the more strict and stringent states in the U.S.

19 So any child in ORR care will come across  
20 several mandated reporters on any given day. And  
21 the mandated reporters are teachers, social workers,  
22 childcare workers who, if they see child abuse and  
23 they know about child abuse or they have reason to  
24 believe or suspicion that abuse has occurred,  
25 they're required to -- by the state to file a report

0226

1 and to take follow-up action.

2           And so on any given day, you know, the  
3 child will see many, many different mandated  
4 reporters who could at any time make a child abuse  
5 report on the kid's behalf.

6           Field coordinators, which I'm one of, meet  
7 individually with children, the local shelter,  
8 mental health service providers, legal service  
9 providers and a host of other individuals involved  
10 in care of unaccompanied children.

11           The field coordinators provide evaluations  
12 and assessments in order to make recommendations to  
13 ORR on placement and release decisions based on the  
14 best interests of the child.

15           And I think here it's important to note  
16 that a large majority of these children do get  
17 released from the ORR shelters. I think it's  
18 upwards of 60 percent. And they get released to  
19 family members here in the United States.

20           There's a very strong order of preference  
21 of family members that we -- "we" meaning the  
22 shelter, myself, and ORR -- like to release children  
23 to. At the top of the list, mother and father, and  
24 then it goes down in degrees of distance and  
25 relatives from the child.

1           Maintaining the rights of abused children  
2 must occur on many levels, though, beyond the local  
3 shelter. ORR has made many strides in policy  
4 changes and new care models. Nevertheless, ORR  
5 needs to continue to expand its use of smaller care  
6 arrangements and eliminate its dependence on large  
7 institutional settings, even among current  
8 providers.

9           The larger a children's facility, the more  
10 institutional it becomes. And no matter how sound  
11 the services are or how caring the staff at some of  
12 the larger shelters, this concept is supported by  
13 standards of child welfare practice.

14           Finally, one of the biggest remaining  
15 obstacles to protection is the lack of access to  
16 full legal representation or legal remedies for  
17 these children. Again, like the adult detainees,  
18 these children are in removal proceedings. They  
19 have to appear before an immigration judge and fight  
20 their case and say, you know, I have a right to stay  
21 in the U.S. And if not, they have to be removed.

22           And so while efforts are made to improve  
23 individual assessment and incorporate child  
24 advocates -- which the child advocate model is one  
25 that's used in the child protective system in any

1 state system. So a guardian ad litem would be  
2 appointed to a case for a child that's been abused.  
3 In the system for immigrant children, that's not the  
4 case.

5 For the nonprofits that represent these  
6 kids, understaffed and overburdened nonprofit legal  
7 projects struggle to provide basic legal orientation  
8 and screen these children for possible immigration  
9 relief.

10 There are a couple of other types of legal  
11 protections, for example, the U-Visa and the T-Visa,  
12 that are offered. T-Visa for victims of  
13 trafficking, which could include children who have  
14 been sexually abused.

15 The U-visa reserved for children who have  
16 been other -- victims of other types of crimes.  
17 Both of those legal protections are not easy systems  
18 to access for children, especially if they have no  
19 attorney.

20 And one of the biggest things that I really  
21 wanted to mention to the Commission today is the  
22 process of special immigrant juvenile status.

23 Now, that's a visa that's reserved for  
24 children who have been abused, abandoned, or  
25 neglected.

0229

1           Now, in the state system, if a child -- if  
2 a local kid has been abused, abandoned, or  
3 neglected, he or she can go into the local courts  
4 and ask that a judge make a finding of dependency.

5           Now, if the judge does this, they could  
6 declare that this child is a ward of the state.

7           Now, for immigrant children, this visa sort  
8 of is the overlap between that protection and these  
9 immigrant children.

10           And now, if a child is in an ORR facility,  
11 in order for them to access this visa, they have to  
12 request consent from the Department of Homeland  
13 Security, Office of Juvenile Affairs.

14           Now, a diligent attorney can prepare a  
15 summary and say, this is why I find that this child  
16 meets the criteria for this visa and also that it's  
17 likely that they will be deemed abused, abandoned,  
18 or neglected.

19           So that petition will go to one person in  
20 an office of Homeland Security, and that person  
21 reviews this petition and can say whether or not he  
22 will allow this child to go forward with that  
23 application or not.

24           And that -- that process -- that person,  
25 not having any child welfare background, reviewing

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1 very sensitive children's issues, cases, making a  
2 decision on whether or not this child can go forward  
3 with this case I think is a severe, severe conflict  
4 of interest.

5           And it really hurts child protection in  
6 this area. It's probably one of the biggest things  
7 that I see as hindering -- you know, any child who  
8 had been abused on any point from the time they left  
9 their journey, all the way up until being at the  
10 shelter, that's a legal protection for them that is  
11 often a very difficult thing for them to access.

12           So as you can see, the situation of these  
13 kids is indeed unique. I mean, they don't -- again,  
14 don't fit into sort of the classic idea of what's a  
15 detainee.

16           So I would like to thank you for the  
17 opportunity to be here and to speak about these  
18 children's cases.

19           CHAIRMAN WALTON: Thank you very much.  
20 That was very helpful.

21           Mr. Nugent?

22           MR. CHRISTOPHER NUGENT: Thank you, your  
23 Honor. It's a privilege and honor to speak before  
24 this Commission. I really thank you for caring  
25 about including concerns for the vulnerable

0231

1 population of unaccompanied alien children.

2 I would concur with my colleague, Sergio,  
3 that Office of Refugee Resettlement has made  
4 remarkable progress in protecting unaccompanied  
5 children in their care, custody, and placement  
6 pursuant to the Homeland Security Act of 2002.

7 But I would like to pan out for a minute to  
8 what is going on in the international system.

9 We have -- Office of Refugee Resettlement  
10 inherited a detention system for these children.  
11 And what they are doing is just trying to make the  
12 detention system better. So you have like 500  
13 children detained at -- several hundred children  
14 detained in facilities in Texas without access to  
15 pro bono attorneys or guardians, going through  
16 immigration proceedings unrepresented.

17 In the international system the way it  
18 works, you don't have these unaccompanied children  
19 out of sight, out of mind. They actually are  
20 integrated into the communities that they're living  
21 in, going to local schools during their immigration  
22 processes.

23 Here we've had a system that has just  
24 developed because of INS legacy, INS's approach of  
25 creating an economy of scale where it was easier

0232

1 just to warehouse these children at the border and  
2 keep on expanding these facilities. That's what ORR  
3 has inherited. And because of financial restraints,  
4 they have been sticking with these larger facilities  
5 at the border without access to pro bono  
6 representation.

7           The Homeland Security Act of 2002  
8 transferred the care, custody, and placement of  
9 these children because of INS's fundamental conflict  
10 of interest in acting as police officer, arresting  
11 officer, guardian ad litem, and prosecutor against  
12 these children and INS's dismal track record, as  
13 Sergio had alluded to, of warehousing children in  
14 secure facilities.

15           And it was very interesting back then  
16 because when I looked into this issue of how are you  
17 holding children in secure facilities with juvenile  
18 delinquents in compliance with the JJDP, the  
19 Juvenile Justice Delinquency and Prevention Act, I  
20 was told by INS officials, well, we have waivers for  
21 all of these facilities to hold these children  
22 with -- who are just status offenders with  
23 adjudicated delinquents.

24           And it defied logic, but that was INS's  
25 response back then.

0233

1           So currently, though, the Homeland Security  
2 Act, you know, was crafted super quickly based on  
3 the pending Unaccompanied Alien Child Protection  
4 Act, which is a Feinstein/Brownback bill. And it  
5 left a lot of gaps, a lot of gaps which I think --  
6 which I refer to in my testimony as black holes,  
7 which I think render children vulnerable to abuse  
8 and misconduct by government officials as well as  
9 other inmates with relative impunity.

10           There's been a tension that has been  
11 occurring between Office of Refugee Resettlement and  
12 the Department of Homeland Security over children's  
13 issues. And I think that tension boils down to law  
14 enforcement interest over the children in terms of  
15 prosecuting and deporting them quickly and upholding  
16 the integrity of U.S. immigration law versus child  
17 welfare considerations, which Office of Refugee  
18 Resettlement takes very seriously.

19           So the major issues, the major black holes  
20 that I've identified that I think the Commission can  
21 actually help work on is first classification of  
22 unaccompanied children.

23           Department of Homeland Security acts as the  
24 virtual gatekeeper of these children, which children  
25 are actually going to go to Office of Refugee

0234

1 Resettlement custody after they're arrested.

2           The Department of Homeland Security relies  
3 on bone and dental forensics for age determinations,  
4 which have a three-year margin of error. So you  
5 have a lot of children who are actually children  
6 being subject to testing for -- of their bones and  
7 their teeth and being classified as adult, who then  
8 go to adult detention centers.

9           And then we have the problem there in the  
10 adult detention center, they do not necessarily  
11 access pro bono representation, cannot contest that  
12 they have been misclassified in an adult facility,  
13 but you have vulnerable children who end up in these  
14 adult detention centers by virtue of the age  
15 determination testing that occurs.

16           It also admittedly occurs because some  
17 children do lie when they're crossing the border.  
18 My experience has been that Latino children are sort  
19 of told by the smugglers that it's better to say  
20 that you're over 18 and that then you can work and  
21 you'll get out of custody faster.

22           And so that also happens. And so then  
23 children end up in adult detention facilities, and  
24 Department of Homeland Security does not have  
25 policies and procedures to redress that.

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1           When they're in these adult facilities,  
2   that is where they are very, very vulnerable to, you  
3   know, potential sexual abuse by inmates as well as  
4   immigration detainees that they're commingled with.

5           The other classification -- so that -- the  
6   other classification issue that's been occurring is  
7   what is an unaccompanied child versus what is an  
8   accompanied child?

9           Office of Refugee Resettlement only has  
10   jurisdiction over unaccompanied alien children, not  
11   children accompanied by their parents or legal  
12   guardians to the United States.

13          But there have been cases where children  
14   are picked up in the interior and had been living  
15   with their family members and then get classified by  
16   Department of Homeland Security as accompanied  
17   children. So they're not going to go to ORR custody  
18   and not be eligible for the benefits and services in  
19   ORR custody.

20          Department of Homeland Security operates  
21   several facilities exclusively holding children,  
22   including Berks County, Pennsylvania.

23          That was a facility that when Office of  
24   Refugee Resettlement visited it, they canceled their  
25   contract with Berks County because they thought it

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1 was too punitive a setting after a "U.S. News &  
2 World Report's" article on the facility.

3 But Department of Homeland Security  
4 maintains a contract with that facility and  
5 selectively determines who's accompanied versus  
6 who's not accompanied for placement in that  
7 facility.

8 So I don't know if you heard about the case  
9 last year. It was widely reported in the "New York  
10 Times" about the two girls in New York allegedly who  
11 were suicide bombers. Turned out not to be suicide  
12 bombers. One ended up back in Bangladesh. The  
13 other is currently with her family.

14 Department of Homeland Security was able to  
15 classify them as accompanied because they had family  
16 in the United States, parents in the United States.  
17 So that is how they were able to put them in Berks  
18 County, Pennsylvania, and keep them from Office of  
19 Refugee Resettlement in fear that Office of Refugee  
20 Resettlement would release them back to their  
21 parents, as they're required to, under the Flores v.  
22 Reno class-action settlement which governs  
23 conditions of confinement.

24 We really -- advocates don't know how many  
25 beds Department of Homeland Security has around the

0237

1 country for these children, where they end up  
2 getting moved about.

3 I heard about that facility. I also heard  
4 about a facility in San Diego that DHS is using for  
5 purposes of accompanied children.

6 Accompanied children also raises the issue  
7 that's in my testimony about the new family facility  
8 that Secretary Hutchinson referred to and the need  
9 for more family-based detention.

10 That would be for accompanied children who  
11 are -- accompanied children who are with their  
12 family, their parents, or their legal guardians at  
13 the time of the apprehension by Department of  
14 Homeland Security.

15 The Hutto facility is run by Corrections  
16 Corporation of America. It's a 500-bed facility.  
17 It's a prison that has been retrofitted as a  
18 detention center. It's been affectionately referred  
19 to by a DHS colleague as "Club Fed with Teddy  
20 bears." And the reports we're getting from Hutto  
21 facility are very disturbing, from advocates who  
22 have been serving families there.

23 Parents have to -- it's a restrictive  
24 setting. Parents have to be with their children at  
25 all times. The teachers are not licensed in the

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1 facility. The clinicians are not licensed in the  
2 facility. The facility itself is not even licensed  
3 under Texas state law because Texas state law has no  
4 provisions for licensing a family detention center.

5 Children have been losing weight in the  
6 facility and complaining about not getting enough  
7 food. Breakfast, lunch, and dinner consists of ten  
8 minutes for each -- for breakfast, lunch, and  
9 dinner.

10 Showers are in the evening, typically, and  
11 the water is cold. And air-conditioning is used as  
12 a punitive measure. If there's a disciplinary  
13 problem in the facility, the air-conditioning is  
14 turned up.

15 So this is a new facility that is being  
16 touted by Department of Homeland Security as being  
17 humane and an effective way of ending catch and  
18 release, but I think it really warrants this  
19 Commission's greater investigation.

20 Conditions of confinement in Border Patrol  
21 stations and compliance with Flores in terms of  
22 transfer of children from DHS to ORR; that's  
23 supposed to happen within a three- to five-day  
24 window period.

25 The -- it is not happening. Congress

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1 has -- Congress and advocates have been outraged  
2 over that because it means children are spending  
3 longer periods of times in jail-like settings at  
4 Border Patrol stations where there is a possibility  
5 of commingling with adults, and there is a  
6 possibility of sexual abuse in these Border Patrol  
7 stations.

8           Finally, repatriation has been an issue for  
9 Congress. And in my testimony I refer to their  
10 concern about how DHS is repatriating children to  
11 their country of origin without looking into whether  
12 they're going to actually be taken care of in their  
13 country of origin.

14           And so, therefore, Congress is recommending  
15 that they work on some policies and protocols to  
16 have safe repatriation of children.

17           Finally, in terms of recommendations for  
18 this Commission, the Flores v. Reno class-action  
19 settlement is currently being promulgated into  
20 regulations by Office of Refugee Resettlement and I  
21 believe Department of Homeland Security since it  
22 governs both.

23           I think the Commission's input over  
24 prevention of sexual abuse of unaccompanied children  
25 would be very helpful because currently Flores does

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1 not address that issue and does not provide for, you  
2 know, the processes for complaints with  
3 confidentiality.

4 And echoing Sergio, I think, also, we need  
5 to think about with the complaint process, what kind  
6 of services are the victims actually going to  
7 receive beyond just getting confidentiality for  
8 complaining vis-a-vis the children.

9 The Unaccompanied Alien Child Protection  
10 Act is also on the verge -- another recommendation  
11 for the Commission is on the verge of being  
12 reintroduced in Congress. The Unaccompanied Alien  
13 Child Protection Act only codifies Flores,  
14 provisions in Flores. It does not address this  
15 issue of prevention of sexual abuse of unaccompanied  
16 children.

17 And, finally, I think more inquiry in terms  
18 of the Mexican children at the border. When we talk  
19 about unaccompanied alien children, we're really  
20 talking about 8,000 children who are detained, going  
21 through immigration removal proceedings.

22 But at the border, at ports of entry there  
23 are over a hundred thousand Mexican children who are  
24 just being turned around at the border within 24 to  
25 20 -- typically 24 to 36 hours and where there's

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1 very little oversight and accountability where  
2 instances of abuse could occur with complete  
3 impunity because of the quick turnaround time that's  
4 occurring at the border.

5           And these children, they've got the right  
6 to make a phone call. They don't make the phone  
7 call necessarily to a lawyer. And they also have  
8 rights to relief from removal, including asylum and  
9 special immigrant juvenile protection. But it's  
10 another gaping black hole that we're just only  
11 starting to learn about because we've been really  
12 only focusing on the 8,000 children who are going  
13 through removal proceedings who are getting better  
14 access to pro bono counsel.

15           So I thank you very much and look forward  
16 to your questions.

17           CHAIRMAN WALTON: Thank you for your  
18 testimony.

19           Ms. Tosado, if -- Mr. Nugent seems to say  
20 it's pretty bleak for children.

21           MS. REBEKAH TOSADO: He does.

22           CHAIRMAN WALTON: Do you agree with him?

23           MS. REBEKAH TOSADO: Well, I would like to  
24 provide you some information on the role of our  
25 office and what DHS's continued role is in this

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1 area.

2 I want to emphasize that we have two main  
3 missions, and one includes providing proactive legal  
4 and policy advice to departmental components, which  
5 means a lot of times we need to -- our work needs to  
6 be informed by what you are seeing as the impact of  
7 policies and procedures on your clients.

8 So we urge you to bring concerns to us and  
9 to ICE directly. And, also, we have a mechanism to  
10 investigate and resolve complaints. And many of the  
11 issues that you discussed could be addressed through  
12 the complaint process.

13 So the area of unaccompanied minors,  
14 population of unaccompanied minors is one my office  
15 has been involved in.

16 You've already heard that the Homeland  
17 Security Act -- it transferred responsibility for  
18 care and protection of minors to ORR, which means  
19 Department of Homeland Security -- that's  
20 unaccompanied minors -- no longer has that  
21 responsibility for housing a majority of minors.  
22 There are some minors that we still do house in some  
23 of our facilities, as Mr. Nugent has mentioned.

24 The DHS responsibilities that we continue  
25 to have include apprehension of unaccompanied

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1 minors, their processing either at the ports of  
2 entry or at the processing stations, referring the  
3 cases to ORR, and managing the court cases,  
4 immigration cases.

5           Just to give you a little bit of an  
6 overview of how it happens, how the process works,  
7 Customs and border protection officers at the port  
8 of entry or the Border Patrol agents that are  
9 stationed along the border normally are the law  
10 enforcement officials that interact with  
11 unaccompanied minors. It could be ICE officers as  
12 well in the interior.

13           When an unaccompanied minor is apprehended,  
14 they are transported either to the processing  
15 station, unless it's at the port of entry, in which  
16 they're held there for a short period of time, or  
17 in -- at least for a transitional period.

18           As I think the two witnesses testified,  
19 they're not detention facilities. They're not meant  
20 to be detention facilities, and they don't provide  
21 the services that one would expect of detention  
22 facilities.

23           But there are some requirements that need  
24 to be met. The two things I wanted to mention is  
25 that minors are not placed with unrelated adults.

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1 That is a mandate, and that is something that is  
2 followed at the detention facilities.

3 In addition to that, minors are supervised  
4 by the CBP officers or the Border Patrol agents  
5 while they're in their custody.

6 Once the processing has been completed --  
7 or when the processing is about to take place, if  
8 there's an unaccompanied minor, the Border Patrol  
9 will call ICE, the coordinator, the juvenile  
10 coordinator to make contact with ORR and provide  
11 them information about the unaccompanied minor so  
12 that the -- so that a placement can be identified.

13 Once ORR enters into the process, a  
14 designation is made to transfer that minor to the  
15 ORR, either its facility -- in some cases it's  
16 foster care.

17 And the -- so at that point the ICE -- at  
18 that point the designation is made. The practice  
19 right now is for the DHS officials to transport that  
20 minor to ORR, whatever placement is available and  
21 made available by that agency.

22 ICE and NCBP both have policies and  
23 procedures in place that are aimed to ensure that  
24 unaccompanied minors are treated with, quote,  
25 dignity, respect, and special concern for their

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1 particular vulnerability as children, end quote, and  
2 that's from the agreement.

3 For a number of years ICE policy has been  
4 incorporated into a juvenile protocol manual which  
5 was first developed by the INS after the agreement.  
6 And that policy is in the process of being updated.

7 Chief of the Border Patrol, Aguilar, issued  
8 policy to the field which provides a great deal of  
9 guidance on how Border Patrol agents should handle  
10 unaccompanied minors that come into their  
11 short-term -- into the facilities for a short-term  
12 basis. And the memorandum affirms the procedures  
13 that require the Border Patrol to contact ICE so  
14 that ORR is notified immediately.

15 But it also states that unaccompanied  
16 minors will be processed expeditiously. And what's  
17 important here is that they are to be -- they have  
18 priority over all other aliens in custody and  
19 reiterates the need to comply with the agreement and  
20 for the standards for temporary hold rooms and  
21 requires that unaccompanied minors receive hot meals  
22 or three meals a day and be provided to access to  
23 snacks, milk, and juice during that short-term hold.

24 The memorandum states it is imperative that  
25 the guidance be adhered to and that unaccompanied

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1 minors be relocated to an ORR-approved facility as  
2 soon as possible.

3 Our office has been working with these two  
4 components within the department to improve  
5 conditions, detention for unaccompanied minors, and  
6 to expedite the transfer of these minors to ORR.

7 We've received some complaints and  
8 investigative complaints regarding treatment of  
9 unaccompanied minors. We have recently issued a  
10 final report on recommendations to ICE and Customs  
11 and border probation. This is an internal document  
12 we talked about before.

13 And our office will continue to work with  
14 the components and with ORR to monitor conditions  
15 and treatment of minors in DHS custody.

16 Thank you.

17 CHAIRMAN WALTON: The report, the internal  
18 report you just referenced, you're saying we would  
19 not be able to gain access to that?

20 MS. REBEKAH TOSADO: Well, sir, the way  
21 that our office carries out its responsibilities is  
22 to work with the components, to gain access to as  
23 much information as we can, and to provide a  
24 confidential report that is not released to the  
25 complainant.

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1           CHAIRMAN WALTON: But we wouldn't be able  
2 to, you say, have access to that?

3           MS. REBEKAH TOSADO: I don't know, sir, if  
4 legally the Commission would have authority to  
5 access those reports.

6           But part of the work that we do is aimed to  
7 make those recommendations in a confidential manner  
8 so that ICE can improve and CBP and the other  
9 components can improve their processes before issues  
10 become -- before they get to a level where there is  
11 no kind of resolution that can take place outside a  
12 courtroom.

13          CHAIRMAN WALTON: Yeah. I mean, I don't  
14 think we would have an interest in breaching the  
15 confidentiality objective that you have, but I think  
16 we might be interested in knowing what you found.

17          MS. REBEKAH TOSADO: Uh-huh.

18          CHAIRMAN WALTON: I think it would be very  
19 helpful to us.

20          COMMISSIONER FELLNER: Would you be able to  
21 tell us, since there's no individual complainant  
22 involved --

23          MS. REBEKAH TOSADO: Uh-huh.

24          COMMISSIONER FELLNER: My understanding is  
25 that there's no individual complainant involved in

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1 this report, that you did an assessment of --

2 MS. REBEKAH TOSADO: No. There were  
3 individual complaints, yes.

4 COMMISSIONER FELLNER: And this is just a  
5 response -- investigation on those individual  
6 complaints?

7 MS. REBEKAH TOSADO: Right.

8 COMMISSIONER FELLNER: Can you summarize  
9 what the nature of the complaints were and what the  
10 nature of your findings were?

11 MS. REBEKAH TOSADO: I can't summarize at  
12 this time the nature of the findings. And at this  
13 point the case is not -- it's not a closed  
14 complaint, and so I hesitate to provide any more  
15 information.

16 COMMISSIONER FELLNER: It's just one  
17 complaint?

18 MS. REBEKAH TOSADO: There's one complaint  
19 that involves a multitude of unaccompanied minors.

20 COMMISSIONER FELLNER: And what -- can you  
21 say what the problems were that the minors alleged  
22 that you have addressed in this report?

23 MS. REBEKAH TOSADO: I really can't say at  
24 this time. It's the -- the complaint remains open,  
25 and I can't provide any other information. I'm

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1 sorry.

2 COMMISSIONER FELLNER: Can we issue a  
3 formal request? I find that -- even though that it  
4 is open and even if you keep confidential the names  
5 of the complainants, I find it hard to believe that  
6 it's in the interest of either the minors or your  
7 office or the public or anyone else that you not be  
8 able to provide the Commission with a sense of what  
9 were the nature of the allegations and whether you  
10 had some sense as to whether they were founded.

11 MS. REBEKAH TOSADO: I'm not saying that  
12 I'm not able to --

13 CHAIRMAN WALTON: Well, I don't think we  
14 can put her on the hot seat for that.

15 MS. REBEKAH TOSADO: No. I'm not saying  
16 I'm not able to do that at all. Right now I'm not  
17 in a position to provide you that information.

18 CHAIRMAN WALTON: We would ask that if you  
19 could find out from your superiors whether that  
20 information could be made available to us. I  
21 understand in your position you're not at leisure to  
22 do that.

23 COMMISSIONER FELLNER: With as much  
24 guarantee, obviously, for the privacy, if they're  
25 individual complainants, or people -- specific

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1 officers who --

2 MS. REBEKAH TOSADO: Well, it is -- I'm  
3 happy to look into it some more, but it goes beyond  
4 privacy issues of individual complainants. It goes  
5 to attorney-client -- the privilege -- we have  
6 attorney-client privilege and deliver due process  
7 privileges that would apply to this report. But we  
8 will try to provide as much information as possible.

9 CHAIRMAN WALTON: We would appreciate you  
10 checking on that and seeing if you could make  
11 access, at least to some degree, that information to  
12 us.

13 COMMISSIONER FELLNER: I'm sorry. Are you  
14 the -- whose attorney-client -- who's the attorney,  
15 who's the client in this when you said  
16 attorney-client privilege?

17 MS. REBEKAH TOSADO: Well, we issue a  
18 report from the officer for civil rights and civil  
19 liberties, and it goes to the component. And --

20 COMMISSIONER FELLNER: The component's the  
21 client in this case?

22 MS. REBEKAH TOSADO: The component is the  
23 client, yes.

24 COMMISSIONER FELLNER: Ah. Doesn't that  
25 lead sometimes, then, to a mixed agenda for you if

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1 on the one hand you're supposed to be sort of making  
2 sure that their civil rights and civil liberties are  
3 protected, but on the other hand you represent, you  
4 are the client -- the attorney for the entities that  
5 you're supposed to be making sure --

6 MS. REBEKAH TOSADO: It is a unique agency.  
7 It's unique within the government, and there are  
8 novel issues that have come up in its relationship,  
9 especially in providing proactive advice and  
10 investigating at the same time.

11 CHAIRMAN WALTON: It actually is not  
12 unique. You find that frequently as it relates to  
13 government, because I have those issues brought  
14 before me on a fairly regular basis. So it's not  
15 unique to what you do.

16 COMMISSIONER FELLNER: May I then ask  
17 another? Do you think -- in your capacity in this  
18 office, do you think it would strengthen your  
19 ability to protect civil rights and civil liberties  
20 of the people who are affected by those agencies if  
21 you were not in an attorney-client relationship with  
22 the component parts, but you were somehow  
23 independent of that; with the same investigative and  
24 consultative, but you were not in this particular  
25 relationship?

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1 MS. REBEKAH TOSADO: I'm not sure. I think  
2 what you're describing is more of an IG role, which  
3 is not what we are in the department.

4 CHAIRMAN WALTON: Commissioner Struckman-  
5 Johnson.

6 COMMISSIONER STRUCKMAN-JOHNSON: Just a  
7 general question. Perhaps -- I guess to perhaps  
8 first address if you could imagine -- or envision  
9 what you think would be a safe environment at the  
10 so-called border holdings, what would you recommend  
11 be set up to make sure if they're held for -- if  
12 kids are there for more than a day or so, what  
13 should it look like?

14 MR. CHRISTOPHER NUGENT: Well, we have  
15 given that some thought.

16 I just think immigration, Customs  
17 enforcement should not be involved in the detention  
18 of children or detention of families and that there  
19 would be a way that they would be able to structure  
20 that with nongovernmental organizations, such as the  
21 Salvation Army.

22 Even if they have guards at the perimeter  
23 of these facilities, but not -- so that it's not  
24 going to be a law enforcement approach and that it  
25 will be more sensitive to the vulnerabilities of

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1 both children as well as families.

2 And there are a lot of nongovernmental  
3 organizations with expertise. And if DHS wants to  
4 put guards at the perimeter, we would welcome that  
5 as opposed to children languishing in Border Patrol  
6 station jail cells.

7 COMMISSIONER STRUCKMAN-JOHNSON: Thank you.

8 CHAIRMAN WALTON: Commissioner Fellner?

9 COMMISSIONER FELLNER: Yeah.

10 Can you -- I'm sort of curious about the  
11 Hutto facility. And I was quite surprised to see  
12 that parents and children are wearing prison  
13 jumpsuits in that.

14 Now, again, who sets the terms, who  
15 monitors, who makes sure that what is going on in  
16 Hutto is consistent with the values and principles  
17 that are supposedly being followed?

18 And I would like to know from Ms. Tosado,  
19 and I would like to know from you guys.

20 I mean, how is it that these kids are in  
21 jumpsuits? Who made that decision?

22 And I know we're getting a little afield  
23 from sexual abuse, so I wanted to also get back to  
24 that and say, are you hearing -- the testimony of  
25 everybody so far this morning, I mean, from the

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1 three of you, there has been discussion of sexual  
2 abuse, in Mr. Medina's testimony, in terms of as  
3 they're being smuggled or brought into the United  
4 States.

5 But we haven't heard anything about abuse  
6 of children in the facilities, other than being, you  
7 know -- abuses such as the ones that you've  
8 mentioned earlier.

9 Can you address what you know or have heard  
10 or concerns or whatever about -- as this  
11 Commission's mandate is to focus on sexual abuse in  
12 the facilities, not as they're being transported.

13 Unfortunately, the smugglers are not within  
14 our purview, so the "coyotes" escape us.

15 MR. SERGIO MEDINA: That's a difficult  
16 question because I'm not really in a position where  
17 I would find out if sexual abuse had occurred. I'm  
18 not the person that would be notified. I'm charged  
19 with coordinating care for children at the  
20 facilities.

21 So, I mean, that's -- it's in the work that  
22 I've done, I haven't come across any direct  
23 instances where a child said that I was abused by a  
24 staff.

25 You know, during the ages of 10 to 17, it's

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1 known that it's a time of sexual exploration for  
2 children. There's other children there. There may  
3 be some sexual behaviors that do come out, but  
4 that's part of the normal course of childhood  
5 development.

6 Now, as far as the Hutto facility, I think  
7 it's a fairly new facility. And there was from a  
8 lot of the advocates saying that, you know, you  
9 can't split up families the way that immigration  
10 was.

11 So I think part of the response was to open  
12 a family facility, but it's now been discovered that  
13 the way it has been opened and the way that the  
14 conditions are there -- and I think there was a  
15 recent visit by a nonprofit agency to talk to  
16 inmates -- to residents and see what's going on, and  
17 it doesn't look good.

18 So I think it's in the process of  
19 documenting what are the concerns, what are the  
20 issues, and then hopefully, you know, advocating for  
21 those to be known and for those to be hopefully  
22 addressed in a good way.

23 COMMISSIONER FELLNER: Do you know what the  
24 name of the agency was that went in?

25 MR. SERGIO MEDINA: It was -- Lutheran

0256

1 Immigration and Refugee Service was two of my  
2 agency -- a couple of -- I don't know who else  
3 attended.

4 MR. CHRISTOPHER NUGENT: The women's  
5 commission.

6 MR. SERGIO MEDINA: Yes, the women's  
7 commission for refugee immigrant children.

8 COMMISSIONER KANEB: Mr. Medina, you say  
9 you have, and I'm pleased to hear you have,  
10 apparently, easy access to these facilities.

11 MR. SERGIO MEDINA: Yes.

12 COMMISSIONER KANEB: And your people do  
13 too.

14 MR. SERGIO MEDINA: Yes.

15 COMMISSIONER KANEB: I'm pleased to hear  
16 that, and what I -- could I -- notwithstanding what  
17 you just said, I would infer -- but you tell me if  
18 I'm wrong -- that given the easy access that you and  
19 people that work with you have, don't you think if  
20 there were sexual abuse going on at any significant  
21 level, you'd hear about it?

22 MR. SERGIO MEDINA: I would say probably.  
23 I would say probably.

24 But, you know, the -- you know, going to  
25 the shelters and working with the caseworkers,

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1 working with the director of the program, meeting  
2 with the children, and trying to get this kid, you  
3 know, an attorney, access to a psychiatrist or some  
4 medical treatment, mostly all of that is going to  
5 revolve around, you know, what's happened to this  
6 child up and to the point that they get there.

7           And I think once they get there -- and  
8 especially in this region, in Southern California,  
9 the largest facility in this region is 24 beds. And  
10 it's a wonderful facility. You know, it's small  
11 scale. The kids get individualized attention, and  
12 it's not that large warehouse --

13           COMMISSIONER KANEB: Thank you.

14           Mr. Nugent, I got lost when you talked  
15 about how kids who really are minors wind up being  
16 classified as adults, to their detriment.

17           I did hear you say, well, they may have  
18 been advised by their agents to say they're 18 when  
19 they're 16. That's somewhat of a problem, I guess.  
20 It would -- if not defy solution, would make a  
21 remedy difficult.

22           So what else can ICE do to avoid  
23 classifying kids as adults when they are, in fact,  
24 children?

25           MR. CHRISTOPHER NUGENT: Well, that's one

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1 scenario that occurs, where a child lies. And  
2 sometimes the child is lying and saying that they're  
3 under 18 -- that they're over 18, and then go to the  
4 adult facility. There are other cases, actually,  
5 where children, particularly Chinese coming in, know  
6 that they'll get a better situation if they end up  
7 in ORR custody because they'll be releasable if  
8 they're picked up at a port of entry.

9 So you have some Chinese 20-plus-year-olds  
10 claiming to be children so they go to ORR.

11 COMMISSIONER KANE: So the classification  
12 is the system is failing. But what's the solution?

13 MR. CHRISTOPHER NUGENT: Well, the major --  
14 the way this is happening, I think, for most  
15 instances is because of DHS's reliance on bone -- on  
16 forensic testing of children's teeth and children's  
17 wrists, which has a three-year margin of error.

18 And so you have children ending up being  
19 misclassified and sent to the adult facilities.

20 COMMISSIONER KANE: But they don't have  
21 birth certificates. They may be lying. And there's  
22 a three-year margin of error.

23 Is there something we can -- what's the  
24 solution?

25 MS. REBEKAH TOSADO: Sir, if I may, and,

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1 Chris, you may be aware of this.

2 ICE has a policy in place on making age  
3 determinations. It does allow for the wrist X ray  
4 and teeth X rays, as well, but as one of a number of  
5 factors.

6 So there is a policy in place, but the  
7 wrist and teeth X ray is not the determinant factor.  
8 It may depend on a number of issues, including what  
9 the minor -- what the minor says his age is.

10 COMMISSIONER KANEB: Our primary interest  
11 here is avoiding having children put into an adult  
12 facility where they might be more likely to be  
13 sexually abused.

14 MR. CHRISTOPHER NUGENT: Okay. Well,  
15 Department of Homeland Security is the only  
16 government agency, to my knowledge, in the  
17 U.S. Government that relies on bone and forensic  
18 testing of children.

19 Congress has directed Department of  
20 Homeland Security to use holistic age determination  
21 methodologies recommended by medical and child  
22 welfare experts.

23 That would include psychological  
24 evaluations of the children to really sort of get a  
25 sense of it. Because the dental has been exposed in

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1 the "New York Times." And the dentist in New York  
2 who does this gets \$500 per kid, has a globe, and  
3 has a book of pictures of children and then bases  
4 that this child is a child or is an adult.

5 And it's been referred to by Public Health  
6 Service, when I met with them several years ago, as  
7 junk science. And they could not understand why DHS  
8 would be paying \$500 for these dental and bone  
9 exams.

10 And I realize it is only one factor. And  
11 there are a lot of other factors.

12 COMMISSIONER KANEB: I don't want to  
13 trivialize this or take too much more time.

14 I must say that my entrepreneurial  
15 instincts have been, let's say, aroused here. At  
16 \$500 a case, I'll bet I could, with some expert  
17 help, come up with some clinics that could do a  
18 better job. So I'll see you afterwards.

19 Thank you.

20 CHAIRMAN WALTON: Commissioner Aiken.

21 COMMISSIONER AIKEN: Just one question with  
22 two parts.

23 Your shop of director of review and  
24 compliance in the Office of Civil Rights and Civil  
25 Liberties, what is your formal relationship with the

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1 policymakers and interpreters in that agency, using  
2 an example of something that you have discovered in  
3 the agency that needs direct and appropriate  
4 attention, i.e., pertaining to sexual abuse of  
5 children, for example?

6           After understanding that formal  
7 relationship, what are some suggestions or  
8 observations that would improve that, if necessary,  
9 to make sure that it's a seamless, productive  
10 relationship?

11           MS. REBEKAH TOSADO: Well, our goal is to  
12 be integrated to the work of the department  
13 policymaking.

14           I myself am not involved in that anymore.  
15 I'm just focusing on complaints. And now at the  
16 outcome of complaints when we have recommendations  
17 that can have systemic impact, we will address this  
18 at a policy level.

19           But we do have policy advisors in the  
20 office that are responsible for engaging that  
21 proactive advice, looking at regulations, having  
22 discussions about different immigration proposals  
23 and that kind of thing.

24           When Mr. Hutchinson was the Undersecretary,  
25 he included us as part of his staff, though we

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1 report directly to the secretary and we're  
2 independent of his office.

3 So we had that relationship established,  
4 and we have a relationship with the director of  
5 policy, of immigration policy for the Department of  
6 Homeland Security.

7 And we have people on my staff in my office  
8 that participate in those meetings and exchange  
9 information and provide advice on issues that are  
10 ongoing.

11 COMMISSIONER AIKEN: So I'm still a little  
12 confused.

13 There is a burning issue in relationship to  
14 policy development and policy interpretation. And  
15 it's generated and discovered and detected from your  
16 particular office in relationship to, i.e.,  
17 complaints that are validated concerning sexual  
18 abuse.

19 MS. REBEKAH TOSADO: Uh-huh.

20 COMMISSIONER AIKEN: Where does that go  
21 into the chain of command and how are you connected  
22 to the responsible authority to interpret, develop,  
23 implement, monitor changes in policy?

24 MS. REBEKAH TOSADO: Good question.

25 As I said, the officer for civil rights

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1 reports directly to the secretary of Homeland  
2 Security. So that is -- there's a direct line,  
3 direct chain to the secretary to report on our  
4 findings or to report on our concerns about a piece  
5 of legislation or law enforcement operation.

6 There's not a mechanism that requires our  
7 office to sign off on any particular operation or  
8 legislation that's pending in order for the  
9 department to go ahead with it.

10 COMMISSIONER AIKEN: I certainly understand  
11 that, and I'm not going to belabor it anymore.

12 I'm just saying, you're telling me that  
13 there is a burning issue that you have discovered.  
14 And you have direct, untethered access to the  
15 director of Homeland Security for that individual to  
16 consider what you have found and policy  
17 recommendations, if necessary, to remedy the  
18 situation. And you have direct uninhibited access  
19 to that particular office.

20 Is that correct?

21 MS. REBEKAH TOSADO: Well, the officer for  
22 civil rights has direct access to that office.

23 COMMISSIONER AIKEN: I'm talking about not  
24 just you, but that office, whoever's over that  
25 office.

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1 MS. REBEKAH TOSADO: Yes. Yes.

2 COMMISSIONER AIKEN: Okay. Are there any  
3 recommendations or observations that anyone would  
4 have that would further improve, if necessary, that  
5 particular relationship?

6 MS. REBEKAH TOSADO: I can't think of any  
7 at this time.

8 I know that there's a lot of demands on the  
9 secretary and his time. But I know there's an  
10 effort to continue to integrate our office into all  
11 the operations of the department, whether it be an  
12 impact on civil rights and civil liberties.

13 COMMISSIONER AIKEN: I understand.

14 Are there any other observations,  
15 suggestions?

16 MR. CHRISTOPHER NUGENT: And I think  
17 Rebecca can address this, but I'm not sure how the  
18 Office of Civil Rights and Civil Liberties interacts  
19 with the directorate of policy, where policy is set  
20 and where there is actually a refugee coordinator  
21 that deals with asylum and refugee issues and how --  
22 what kind of relationship you have there.

23 And would a promotion to being in the  
24 policy directorate help the stature of the Office of  
25 Civil Rights and Civil Liberties in terms of

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1 integrating the policy work?

2 MS. REBEKAH TOSADO: I don't know. We are  
3 a direct report to the secretary, just like the  
4 director of policy is.

5 CHAIRMAN WALTON: Commissioner Fellner?

6 COMMISSIONER FELLNER: Yeah.

7 I wanted to follow up on two things there  
8 on the role of your office. One -- and following up  
9 on what Jim said. How do you monitor or how do you  
10 determine whether, in fact, the agency has responded  
11 appropriately to your findings?

12 For example, you have submitted now a final  
13 report which presumably has findings.

14 Do you follow up to see, what, in fact, has  
15 been done and do you keep working, and if so, how,  
16 to make sure that the agency takes what you think  
17 are the right steps in response?

18 That's one question.

19 And the second question is, how do you  
20 monitor what is, in fact, happening in the field?

21 Do you only -- does your office -- not just  
22 you, but do you only respond to complaints that come  
23 up either through those quarterly meetings that you  
24 described or whatever, or do you yourself, your own  
25 office go out and conduct some kind of interview or

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1 review process from your own particular perspective  
2 separate from the other mechanisms that were  
3 discussed earlier today?

4 MS. REBEKAH TOSADO: Well, I want to start  
5 by saying that I'm the director. I have two senior  
6 policy advisors and one investigator. That is the  
7 staff of the Office for Civil Rights and Civil  
8 Liberties.

9 Monitoring is very important.

10 COMMISSIONER FELLNER: That's the entire  
11 office?

12 MS. REBEKAH TOSADO: We have some contract  
13 staff as well. That's the entire review and  
14 compliance team within the office.

15 COMMISSIONER FELLNER: So wouldn't one of  
16 your recommendations in response to what Jim said be  
17 that you -- to really do the job that Congress and  
18 the American public anticipated in setting up this  
19 office is you would have to be a heck of a lot  
20 bigger?

21 MS. REBEKAH TOSADO: As I said before, I  
22 did say that we need more staff and more resources.

23 COMMISSIONER FELLNER: I don't think any of  
24 us realized how small --

25 MS. REBEKAH TOSADO: Yes, we're very small.

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1 COMMISSIONER FELLNER: -- tiny.

2 MR. SERGIO MEDINA: If I may add.

3 ORR has issued some guidance to all the  
4 shelters that they work with nationally. And the  
5 shelters are spread out all over the U.S.

6 Often a child, if they have been mistreated  
7 at the Border Patrol station or at any point before  
8 getting to ORR, ORR has asked the shelters to send  
9 that out -- to write it up and to send it in sort of  
10 a report format and that they would be working with  
11 your office and also with the Inspector General to  
12 follow up on those claims.

13 So, you know, once the child gets at the  
14 shelter, they realize that they're safe, they have  
15 some warm milk and cookies, or they feel that  
16 they're okay, maybe a week, two weeks later they'll  
17 say, oh, by the way, the Border Patrol agent I feel  
18 mistreated me in "x" way.

19 So I think that's one way that can help the  
20 kids be able to -- when they do feel safe, make it  
21 known that they feel that they have been mistreated.

22 As far as the result and the outcome of the  
23 investigation, I haven't heard of any final  
24 resolutions. But I think I'm encouraged that  
25 everyone is aware that it should be documented, well

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1 documented, the child's story, and sent in, at the  
2 very least.

3 MS. REBEKAH TOSADO: Thanks for clarifying  
4 that.

5 Also, I want to say that every complaint  
6 that comes to our office we refer immediately to the  
7 IG. That's part of a memorandum of understanding we  
8 have with the Inspector General. So any complaint  
9 that we have is referred first to the IG.

10 The IG can determine whether to open a  
11 complaint or refer it back to us for handling. At  
12 that point we can retain the complaint for  
13 investigation, which means our staff conducts the  
14 investigation and issues a final report, or we can  
15 refer it to the component and ask the component to  
16 do a review and report to us.

17 We ask the components to conclude its  
18 review within 180 days. And we ask follow-up  
19 questions.

20 And so I just wanted to say that to address  
21 the blow of having to say we have a very small staff  
22 and we can't do everything that we would like to do.

23 CHAIRMAN WALTON: Let me just ask.

24 Is it correct that this person who does the  
25 initial screening as to whether a special visa for

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1 children should be secured has no background in  
2 child welfare?

3 MS. REBEKAH TOSADO: That's not correct.  
4 He has extensive background in child welfare.

5 MR. CHRISTOPHER NUGENT: Advocates will  
6 contend that it's from a law enforcement perspective  
7 first and from a juvenile delinquency model as  
8 opposed to a child welfare model in dependency  
9 proceedings.

10 CHAIRMAN WALTON: What background does that  
11 person have, if you know?

12 MS. REBEKAH TOSADO: I actually don't -- I  
13 don't have his -- the details on his background, but  
14 I know that --

15 MR. SERGIO MEDINA: He's sort of the  
16 juvenile coordinator program nationwide. I see him  
17 as sort of the figure of sort of the lead juvenile  
18 coordinator. And they may have some experience  
19 working with children, but it doesn't necessarily  
20 mean that they have a child welfare background.

21 For example, I've seen a consent request  
22 denied for a child. The notes that he put said that  
23 the child had a conversation with his mother and  
24 they noted that -- on the case notes that the file  
25 was sent for him to review.

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1           Well, he used that as a basis to say that  
2 this child, if he had been abused by this mother,  
3 would never want to speak to this mother. And he  
4 denied the consent request.

5           So, I mean, there's a list. We're also  
6 compiling -- my agency's compiling a list of 50  
7 different incidences of absurd bases for denial for  
8 these consent requests, which makes us think that  
9 he's not that sensitive to these kids' issues, and  
10 it seems like he's missing something there.

11           MR. CHRISTOPHER NUGENT: As a footnote,  
12 there are no written criteria or regulations on this  
13 consent process or appeal process. And, also, there  
14 is published case law in the federal district courts  
15 on several mandamus actions reversing his decisions  
16 for being arbitrary and capricious and their  
17 reasoning and not accessing witness testimony.

18           CHAIRMAN WALTON: Okay. Anything else?

19           COMMISSIONER FELLNER: Can I go into a  
20 different -- I asked earlier about sexual abuse, and  
21 there seems to have been -- for various reasons  
22 you've also -- don't have a sense of to what extent  
23 it is or is not present in the unaccompanied minors.

24           What about physical violence beyond sexual  
25 abuse? Just to explore a little bit.

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1           Are you getting stories of children either  
2   having a lot of fights between themselves or staff  
3   using excessive force on the children? Or let's  
4   just broaden this up a bit to see -- I'm curious of  
5   what you are hearing in terms of the treatment of  
6   children in these facilities more broader.

7           MR. SERGIO MEDINA: I can only speak to the  
8   State of California. In the State of California if  
9   you operate a licensed basic shelter, staff are  
10   unauthorized -- they cannot touch children for any  
11   reason other than a pat on the back. There's no  
12   sort of -- and that's regulated that way.

13           I haven't come across any staff-to-child  
14   physical abuse incidences. And I also work in the  
15   Southern California region. So I don't work with  
16   every single shelter in the U.S.

17           Child on child, though -- you know, some of  
18   the kids that we provide care for have really,  
19   really difficult histories. Some have lived on the  
20   streets since the age of 5. Some have grown up in  
21   really violate households. And they'll come to the  
22   shelter and they'll act out and there's behavioral  
23   manifestations for that.

24           And I can safely say that the staff there  
25   at the shelters, you know, really do their best to

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1 intervene in a way that respects the child, that's  
2 not punitive in any way.

3 There's some sort of -- really sort of  
4 modern intervention techniques to work with kids who  
5 have behavioral issues other than punishment.

6 And I think that those are being well used.  
7 But I guess in short, I don't see what you asked.

8 COMMISSIONER FELLNER: Chris, what do you  
9 see -- or hear?

10 MR. CHRISTOPHER NUGENT: I've heard of  
11 incidents similar to what Sergio was alluding to,  
12 about children acting out, which could get construed  
13 as child-on-child abuse and sometimes sexually  
14 aggressive behavior by different teenage children in  
15 the facilities.

16 ORR's response, though, is not to -- INS's  
17 response would be to send this child to a super  
18 secure facility as a first resort.

19 ORR's response is let's work with the  
20 clinicians on staff to see if there are different  
21 sanctions that can be employed and that the child  
22 could still stay here and then think about a  
23 continuum of the different programs.

24 And ORR -- the other benefit of ORR's  
25 approach is that if a child does get sent to a

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1 medium secure facility and starts to rehabilitate,  
2 he can go back to a shelter care facility  
3 afterwards.

4 So they're constantly monitoring the  
5 custody of the children to figure out what the  
6 appropriate placement would be, as opposed to just  
7 leaving them in a secure facility forever, even  
8 though the child is actually demonstrating positive  
9 behavior.

10 The other issue I just wanted to flag,  
11 though, on privacy and confidentiality --

12 COMMISSIONER FELLNER: Wait. Would you --  
13 you were talking about child-on-child misconduct.  
14 What about staff-on-child misconduct, whether it  
15 be -- you're saying not in the small shelters, but  
16 you have knowledge of other facilities and larger  
17 ones.

18 Is that a problem or is the staff well  
19 trained and well disciplined and well -- you know,  
20 following professional rules of conduct?

21 MR. CHRISTOPHER NUGENT: They're being  
22 better trained than when the facilities were under  
23 INS. But a lot of the facilities are the same  
24 contractors that INS used.

25 But the clinicians, for example, when I was

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1 in El Paso, Texas, were feeling pretty -- under a  
2 lot of pressure by ORR in taking a much more  
3 comprehensive approach in terms of helping the child  
4 with their psychological and mental health needs  
5 than before.

6 And some of the teachers were also very  
7 impressed by ORR sort of encouraging vocational  
8 training and very different things that they would  
9 not do previously.

10 So there has been a lot of staff attrition  
11 at these facilities. So they're getting newer  
12 people who are getting acculturated from a child  
13 welfare approach. So I think that's positive.

14 I have not heard, though, of sexual --  
15 recently of any sexual abuse incidents involving  
16 adults and children.

17 In the '90s there was a lawsuit, and I  
18 think a criminal complaint out of a facility in  
19 Chicago involving shelter care staff and that was  
20 very hush-hush and people didn't discuss it  
21 afterwards.

22 But I think it goes to privacy and  
23 confidentiality issues because the other thing that  
24 we're contending with is that, you know, a lot of  
25 the children are instructed by their attorneys not

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1 to speak with the clinicians at the facilities  
2 because ORR doesn't have confidentiality of their  
3 information vis-a-vis the Department of Homeland  
4 Security.

5 So any of the clinician's notes can end up  
6 in the immigration proceedings and being used  
7 against them. And the same thing in terms of  
8 complaints and coming forward.

9 Some attorneys might be telling the  
10 children, you have a complaint. Better not bring it  
11 up here. Let's get you out of custody, and then  
12 we'll evaluate the potential of a lawsuit.

13 And that's been something that also comes  
14 up in adult cases all the time. Like, there's been  
15 a rash of detainees dying in immigration custody  
16 around the country over the last few years.

17 And somebody contacted me for advice and  
18 was, you know, talking about getting the OIG to  
19 investigate or getting civil rights to investigate.

20 And my advice was, well, if you're going to  
21 do a lawsuit, probably best that you get the lawsuit  
22 filed, and then OIG and civil rights could get  
23 involved as a strategy because, you know, the  
24 paperwork of OIG and civil rights is not necessarily  
25 going to help you in a wrongful death action.

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1           CHAIRMAN WALTON: Anything else?

2           Okay. Well, we, again, thank this panel.

3 You provided us with some valuable information.

4 There may be additional questions that we'd like to

5 pose to you. And if we do, we would ask that you

6 please respond to them.

7           This is our last panel on the immigration

8 detention issue. And I think we received a wealth

9 of information that will help us tremendously as we

10 proceed with our assessment of what we should be

11 recommending be done to address this particular

12 population.

13           So we thank you very much for your input.

14           Okay. We'll take ten minutes. Come back

15 in ten minutes to 4:00.

16           (Recess taken from 3:36 p.m. to

17 3:51 p.m.)

18           CHAIRMAN WALTON: Okay. We can get

19 started. We're a little early, which is good, on

20 our last panel. I know I'm a little tired, and I'm

21 sure everybody else is, but we are -- we welcome the

22 next panel, which will be speaking on the role of

23 staff in prisons and detention facilities and

24 eliminating prison rape.

25           Would our two witnesses please stand and

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1 take the oath.

2 Do each of you solemnly swear or affirm  
3 that the testimony you will provide to this  
4 Commission will be the truth, the whole truth, and  
5 nothing but the truth, so help you God?

6 MR. MICHAEL BERANBAUM: I do.

7 MR. TIXOC MUNIZ: I do.

8 CHAIRMAN WALTON: Thank you.

9 The next panel and the panels tomorrow will  
10 devote -- are devoted -- I'm sorry -- to hearing  
11 from those who represent line correctional officers.  
12 We will be hearing from several different unions  
13 through the representations of local presidents,  
14 business agents, and division presidents.

15 Last March this Commission heard largely  
16 from correction officials in management positions.  
17 Since the role of line staff is so crucial to how  
18 prison rape can be eliminated, it is essential for  
19 us to hear from those who deal with inmates on a  
20 day-to-day basis at the actual detention level.

21 The first panel that we'll hear from today  
22 will primarily address the issue of the type of  
23 training that's most effective in acquiring staff  
24 support for measures aimed at eliminating prison  
25 rape.

1           Hopefully our witnesses today will also be  
2 able to provide some insight about the level of  
3 training that thus far has been made available to  
4 correctional officers.

5           Tomorrow's panels will explore the role of  
6 staff in reporting and -- in the reporting and  
7 investigation of sexual assault cases as well as the  
8 impact administrative disciplinary procedures can  
9 have on the incidence of misconduct in the prison  
10 setting.

11           Mr. Michael Beranbaum is the director of  
12 representation for the Department of Corrections  
13 bargaining unit, Teamsters Local 117, in Tukwila,  
14 Washington. And Mr. Tixoc, I guess that is, Muniz  
15 is the President of the Arizona Correctional Peace  
16 Officers Association.

17           I thank both of you for your presence here  
18 today, and we'll hear from Mr. Beranbaum first.

19           MR. MICHAEL BERANBAUM: Thank you.  
20 Mr. Commissioner, distinguished members of this  
21 Commission, it's my pleasure to be here today to  
22 testify on behalf of the 17,000 members of our local  
23 union throughout the state of Washington, including  
24 over 5,000 of whom are employed by the state  
25 Department of Corrections.

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1           Over the past 15 years, I've held various  
2 positions within two Teamster locals, where I've  
3 acquired worthwhile experience representing members  
4 in all facets of public safety.

5           Currently, I am the director of  
6 representation of the Department of Corrections  
7 bargaining unit at Teamsters Local 117, which is the  
8 third largest local union in the International  
9 Brotherhood of Teamsters.

10           As director I oversee a team of  
11 professional business representatives, attorneys,  
12 and a full-time lobbyist, all of whom are  
13 responsible for the daily representation of  
14 correction employees working in 13 institutions  
15 throughout the entire state of Washington.

16           By way of background, the Department of  
17 Corrections facilities vary in size and function.  
18 For example, you have the Monroe Correctional  
19 Complex, which actually houses four separate  
20 institutions within its complex, each with its own  
21 separate custody level, including a sex offender  
22 treatment program.

23           And you also have in the state of  
24 Washington, the Walla Walla -- in Walla Walla,  
25 Washington, the Washington State Penitentiary.

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1           Both of these institutions employ over 1100  
2 line staff each.

3           We also have in the state several  
4 facilities which are what are considered to be work  
5 camps, such as Larch Corrections Center in Yacolt  
6 and Olympic Corrections Center in Forks, Washington,  
7 with approximately 200 correctional staff each. So  
8 it really varies, and we have the full gamut of  
9 facilities.

10           As to the Prison Rape Elimination Act of  
11 2003, Teamsters Local Union No. 117 and the DOC  
12 members we represent accept the goal of zero  
13 tolerance for the acts of rape and other forms of  
14 sexual misconduct within prisons and jails.

15           In the statement offered that you will hear  
16 later, if you haven't already received that, from  
17 Carl E. Haynes, who is the vice President at large  
18 and the director of the public services division of  
19 the International Brotherhood of Teamsters, he  
20 reminds us that ongoing training will help to foster  
21 a work culture where sexual misconduct is not  
22 tolerated. We cannot achieve the goals of PREA  
23 through an unfunded mandate.

24           And I'm going to vary a little bit from  
25 what I heard -- or what I've submitted in written

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1 testimony only to reiterate, I heard a lot of  
2 testimony today about all of the important things  
3 that are needed.

4 But ultimately none of them can be  
5 implemented without funding, and that is an  
6 important part of what this Commission can move to  
7 ask for.

8 Currently new correctional line staff at  
9 the state of Washington, Department of Corrections,  
10 participate in a six-week academy. In addition to  
11 that, they have annually 40 hours of in-service  
12 training each year.

13 It's our belief that there should be a  
14 national strategy to the design and delivery of both  
15 the initial and ongoing training programs, which  
16 should include, from our perspective, the following  
17 areas:

18 One, training of line staff at correctional  
19 institutions to recognize the behavior which leads  
20 to prisoner-on-prisoner rape and effective  
21 techniques and strategies to deal with the  
22 aggressors.

23 Two, there should be joint training between  
24 the correctional line staff, individuals responsible  
25 for the investigation of allegations of

1 prisoner-on-prisoner rape, and those entrusted with  
2 the prosecution of such crimes to ensure that  
3 justice is effectively carried out.

4           Three, we believe that training of  
5 prisoners on the punishments associated with  
6 institutional rape and the making of false  
7 allegations against fellow prisoners and staff.

8           Fourth, training of correctional line staff  
9 to clearly define both the actions which constitute  
10 sexual misconduct and the punishments for  
11 involvement in such actions.

12           And, finally, the fifth aspect would be  
13 training of correctional line staff on the  
14 manipulative nature of the prisoners and how to  
15 detect the warning signs that a coworker may be  
16 falling prey to such behavior.

17           In order to ensure appropriate and  
18 consistent levels of training throughout the  
19 country, time and money are important elements to  
20 accomplish PREA's goals.

21           Within the state of Washington, Department  
22 of Corrections, every single hour of the academy and  
23 the in-service training is already allocated for  
24 courses necessary for the employees to succeed in  
25 their chosen profession.

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1           None of the subjects can be eliminated to  
2 create time for effective PREA training.

3           Moreover, the current requirements exhaust  
4 the yearly budget dedicated for training.

5           Under the circumstances, PREA training can  
6 only be accomplished with assistance from the  
7 Federal Government.

8           I also believe that there needs to be a  
9 strong statement from this Commission endorsing  
10 joint labor management commitment to the type of  
11 training described above.

12           An effective labor management relationship  
13 is founded on trust and mutual respect, which is  
14 built over time.

15           Our union has experienced continuing  
16 maturity in its relationship with the Washington  
17 State Department of Corrections, which continues to  
18 strengthen and grow with each successive collective  
19 bargaining agreement.

20           We have been able to work collaboratively  
21 with each other over issues like the expansion of a  
22 small work camp of approximately 200 beds to what  
23 will be an institution of over 1800 beds, to the  
24 opening of a brand-new facility.

25           Local Union 117 has also had success in

1 gaining member support for significant institutional  
2 initiatives, such as creations of drug- and  
3 alcohol-free workplace.

4 Training, though, is not the only factor  
5 that is necessary to reach the important goals of  
6 eliminating rape. We must ensure there's an  
7 appropriate ratio of staff to inmates in each  
8 correctional facility.

9 In this country, technology, such as  
10 surveillance cameras, which we heard people speak to  
11 this morning as an important goal, are only a piece  
12 and a part. If you don't have the appropriate staff  
13 levels in order to watch what's being recorded on  
14 the tapes and then to act upon what you see, it  
15 doesn't work alone. It needs to be done hand in  
16 hand.

17 In our mind, the strongest deterrent is to  
18 have a well-trained staff on the ground involved in  
19 what's going on in the institution grounds on the  
20 floor.

21 It should come as no surprise that the  
22 solution to the type of progress and vision by PREA  
23 requires money. Funding for proper staffing levels,  
24 salaries, and employee benefits must be a meaningful  
25 aspect of the department's budget.

1           The Federal Government should make funds  
2 available to those agencies that embrace the  
3 program.

4           We must be able to hire competent personnel  
5 and properly compensate them commensurate with the  
6 level of trust and the responsibility necessary to  
7 protect our communities.

8           What should be done to ensure the  
9 corrections personnel are protected? All too  
10 frequently our members' work lives are impacted by  
11 the manipulative nature of inmates in their charge.

12           Although the occurrence of custodial rape  
13 is comparatively rare, the false, unsubstantiated  
14 allegations of inmates are more frequent and can  
15 have a career-ending impact on staff.

16           Within correctional institutions, respect  
17 and integrity are an integral part of success. Once  
18 clouded by unfounded allegations, many staff believe  
19 their careers are forever damaged.

20           The Commission should work to ensure that  
21 correctional line staff are treated fairly during  
22 the often lengthy investigative stage, which more  
23 often than not exonerates the staff involved.

24           Our members are trained to be firm, fair,  
25 and consistent in their dealings with the prisoners,

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1 and they're not always afforded the same level of  
2 respect from their employers.

3           Innocent until proven guilty must be the  
4 guiding principle, and the result of a thorough  
5 investigation must be evaluated against the just  
6 cause standard.

7           All too often, we have cases within  
8 Washington State DOC where prisoners raise  
9 allegations of inappropriate conduct against staff.  
10 And the first assumption by the agency is that the  
11 employee is guilty.

12           We recently had a case which is right on  
13 point with this. A custody officer at the McNeil  
14 Island Corrections Center in Steilacoom, Washington,  
15 was accused by an inmate of inappropriate conduct.

16           The officer was immediately assigned to  
17 home while the agency conducted its investigation.  
18 At the conclusion of the investigation, the employee  
19 was exonerated of the charges by the inmate.

20           The investigation and determination took  
21 more than nine months. During this time the agency  
22 continued to compensate him, yet he was harmed, both  
23 monetarily and emotionally.

24           The officer lost overtime opportunities and  
25 was affected personally by having to explain to his

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1 family and his friends why he was not allowed to go  
2 to work.

3 Situations like the one I just described  
4 are not an anomaly.

5 I believe that if there were a standard for  
6 fair and timely investigations achieved  
7 legislatively and/or through collective bargaining,  
8 the McNeil Island example would become a rarity.

9 Moreover, we found that in agencies where  
10 employees have both a union and the legal right to  
11 full collective bargaining, staff are better  
12 compensated and have a higher sense of self-esteem  
13 and dedication to the job.

14 In closing, the members of my local union  
15 wish to reiterate that they are fully supportive of  
16 the goals of PREA and urge you to ensure that  
17 corrections personnel throughout this country are  
18 provided with the best training and support to make  
19 these goals a reality.

20 CHAIRMAN WALTON: Thank you very much for  
21 your testimony.

22 Mr. Muniz.

23 MR. TIXOC MUNIZ: Well, I just want to see  
24 if I can get his because that's what I'm going to  
25 say.

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1           I want to add that we are camp facilities  
2 inside Arizona. We are 10,000 employees. We have  
3 the same issues that he has.

4           The difference is that our director is pro  
5 union. She meets with us monthly. And she got a  
6 labor group, one from each unit. We meet with her  
7 monthly. We bring the issues to her, so she knows  
8 firsthand what's happening in each one of the units.

9           And the case like he's describing with --  
10 that inmates are making accusations to officers, I  
11 will tell you that it's nothing new. It does  
12 happen.

13           But with this new director we have, what  
14 happened is when somebody's accused is removed from  
15 having contact with the inmate, but still work in  
16 the complex without having made contact.

17           And the investigations go to 90 days is  
18 real fast. And the core discipline is handed to the  
19 inmate that make an accusation. And I think that  
20 would be better to the taxpayers to have the officer  
21 at least working in another capacity instead of just  
22 sending him home and face the thing he was just  
23 talking about right now, being at home and  
24 explaining why he's there.

25           In the state of Arizona, PREA has been

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1 implemented for the last two years. Since our new  
2 director we have, which is per union before the  
3 other one, the first report cases, there were 20  
4 before she became our director, 20 cases or 20  
5 allegations of rape within ten institutions.

6 And her leadership with the last three  
7 years, it reduced to four allegations not sustained  
8 to this moment which shows that PREA works. And her  
9 policies and new training that we're taking right  
10 now is working.

11 We face the same training he's talking  
12 about. We get nine weeks' training before we become  
13 correctional officers, 40 hours a week. Plus we  
14 take every 15 days and 40-minute break, we take a  
15 small class of 10 minutes of PREA, that, you know,  
16 don't cross the line inmate-staff relation.

17 One of the things that I want to add as I  
18 was listening to other people speaking is that not  
19 only the abuse always occur between a staff and  
20 inmates. Sometimes it's among inmates, which is  
21 important to part of the PREA, to keep that clean.

22 And it is most likely the moment when I  
23 come to you and inspect because I make them wait, to  
24 say what just happened, it's embarrassed to tell  
25 another man you just got raped by another inmate.

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1           So our director implement new policies and  
2 procedures due to listen to the officers, you know,  
3 changing policies. Most of the policies they change  
4 in the Department of Corrections in Arizona is due  
5 to the meetings with the labor groups from our  
6 director.

7           We bring the opinions, the ideas, why it's  
8 important to change it. We told her from the field  
9 what works, what doesn't work. And she immediately  
10 in 15 days will make the reaction and change it. So  
11 we are lucky to have her as a director.

12           I must add that as we go along between  
13 labor group and management in the state of Arizona,  
14 we have a very good relation. We have the ability  
15 to communicate in my case as executive president for  
16 the whole state of Arizona. I got a phone line  
17 directly to the director for an issue like that.

18           Yes, we do have cases with officers get  
19 accused. But we are smart enough to figure it out  
20 fast if he makes sense or not. And we always go to  
21 the director, and if it would make sense, she would  
22 react immediately.

23           So other than that, just for your  
24 questions.

25           CHAIRMAN WALTON: What is the starting