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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

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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

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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.

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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

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

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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