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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

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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