reporting process.

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

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

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

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

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

Ms. Cheer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 percent are unrepresented in immigration court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. SHIU-MING CHEER: I do.

MR. BRYAN LONEGAN: I do.

MS. ANNE WIDEMAN: I do.

CHAIRMAN WALTON: Thank you.

Mr. Lonegan.

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

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

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

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

last --

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

MR. BRYAN LONEGAN: All right.

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

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

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

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

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

turnstile of the New York City subway system.

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

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

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

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

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

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

So the Operation Predator program can sometimes be misleading.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Because the general feeling they felt was,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. BRYAN LONEGAN: Yeah. Exactly.

CHAIRMAN WALTON: Ms. Wideman.

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

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

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

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

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

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

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

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

Those who have committed crimes and served

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

home situation.

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

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

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

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

I really thank you for this opportunity to address you.

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

Let me just ask. One of the themes that we

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

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

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

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

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

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

MS. ANNE WIDEMAN: I would add medical staff.

CHAIRMAN WALTON: Right.

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

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

if there's any problem.

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

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

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

whatever his cellmate is smuggling.

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

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

I'm not quite sure I answered your question.

CHAIRMAN WALTON: I think you did.

Commissioner Kaneb.

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

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

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

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

But I'm asking the question to the room.

What about detention centers?

CHAIRMAN WALTON: Immigration detention centers, you mean?

COMMISSIONER KANEB: Yeah, immigration detention centers.

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

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

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

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

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

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

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

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

Is that an accurate characterization?

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

I wanted to add one other aspect to the

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

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

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

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

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

the tracking of complaints.

COMMISSIONER KANEB: Thank you.

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

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

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

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

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

segment of the detained population in America.

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

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

CHAIRMAN WALTON: Commissioner Aiken.

COMMISSIONER AIKEN: Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

So -- I mean, just very basic things.

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

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

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

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

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

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

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

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

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

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

You said that anal fissures and hemorrhoids

can be signs of abuse.

MS. ANNE WIDEMAN: Uh-huh.

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

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

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

And I don't know that they have the

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

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

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

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

MS. ANNE WIDEMAN: No.

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

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

COMMISSIONER FELLNER: Uh-huh.

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

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

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

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

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

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

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

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

COMMISSIONER FELLNER: Thank you.

CHAIRMAN WALTON: Thank you.

Commissioner Struckman-Johnson.

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

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

CHAIRMAN WALTON: We're being told no.

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

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

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

million here?

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

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

MR. RICHARD TEWKSBURY: Yes, ma'am.

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

Thank you.

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

CHAIRMAN WALTON: We have a little bit of time.

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

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

traumatized to begin with.

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

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

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

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

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

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

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

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

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

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

COMMISSIONER FELLNER: I agree.

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

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

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

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

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

And it seems awfully simplistic, but...

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

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

facility or facility for people who have --

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

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

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

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

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

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

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

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

So I'll do that now.

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

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

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

behavior doesn't take place.

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

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

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

I can compile some of those for the Commission.

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

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

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

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

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

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

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

COMMISSIONER FELLNER: Very good point.

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

MS. ANNE WIDEMAN: Yes.

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

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

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

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

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

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

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

been classified and put in this type of housing.

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

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

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

CHAIRMAN WALTON: Okay.

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

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

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

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

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

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

CHAIRMAN WALTON: Okay. Well, thank you

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

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

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

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

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

Would you please stand and take the oath.

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

MS. REBEKAH TOSADO: I do.

MS. CHRISTINA DE CONCINI: I do.

MS. ILIANA HOLGUIN: I do.

CHAIRMAN WALTON: Thank you.

I would like to welcome our next three

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

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

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

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

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

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

Liberties in the United States Department of Homeland Security.

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

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

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

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

to the Commission as we address this very important issue.

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

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

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

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

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

Our office is able to accomplish this in

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

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

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

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

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

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

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

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

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

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

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

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

units and in libraries.

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

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

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

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

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

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

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

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

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

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

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

Thank you.

CHAIRMAN WALTON: Thank you very much.

Ms. DeConcini?

MS. CHRISTINA DE CONCINI: Yes. Hi.

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

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

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

MS. CHRISTINA DE CONCINI: Thank you.

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

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

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

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

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

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

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

So that just gives you -- I only cite that

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

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

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

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

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

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

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

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

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

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

libraries, and phones.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

resolved -- that isn't public.

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

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

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

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

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

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

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

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

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

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

stop detaining people in remote locations.

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

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

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

Thank you.

CHAIRMAN WALTON: Thank you very much for your testimony.

Ms. Holguin?

MS. ILIANA HOLGUIN: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

facilitate this necessary exchange of information.

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

That concludes my testimony. Thank you.

CHAIRMAN WALTON: Thank you very much for your testimony.

Ms. Tosado, let me just ask.

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

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

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

antagonistically or in a litigation mode.

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

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

CHAIRMAN WALTON: Have those recommendations been followed?

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

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

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

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

CHAIRMAN WALTON: Put them in to regulation, yes.

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

Well, yes, absolutely. The answer are --

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

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

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

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

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

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

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

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

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

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

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

Is there any way that some internal

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

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

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

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

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

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

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

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

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

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

CHAIRMAN WALTON: Just one final question.

Who pays for this Legal Orientation Program?

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

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

MS. ILIANA HOLGUIN: Yes.

So currently, even after the expansion

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

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

MS. ILIANA HOLGUIN: 2003.

MS. CHRISTINA DE CONCINI: 2003.

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

CHAIRMAN WALTON: Thank you.

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

corrections officers at all facilities on the detention standards itself.

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

CHAIRMAN WALTON: Thank you.

Commissioner Kaneb?

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

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

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

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

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

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

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

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

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

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

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

MS. CHRISTINA DE CONCINI: You go ahead.

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

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

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

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

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

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

CHAIRMAN WALTON: You will provide that, though?

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

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

order.

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

CHAIRMAN WALTON: Can you do it within 30 days?

MS. REBEKAH TOSADO: Certainly.

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN WALTON: Commissioner Kaneb.

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

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

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

COMMISSIONER KANEB: I read your testimony.

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

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

MS. CHRISTINA DE CONCINI: Yes.

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

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

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

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

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

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

COMMISSIONER KANEB: I'm through for the moment.

Thank you.

CHAIRMAN WALTON: Commissioner Struckman-Johnson?

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

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

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

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

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

relationship with folks.

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

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

CHAIRMAN WALTON: What if they were given that role?

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

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

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

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

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

CHAIRMAN WALTON: The henhouse.

MS. CHRISTINA DE CONCINI: Henhouse, right.

CHAIRMAN WALTON: Commissioner Struckman-Johnson?

COMMISSIONER STRUCKMAN-JOHNSON: Who would it be?

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

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

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

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

CHAIRMAN WALTON: Anything else?

Commissioner Fellner?

COMMISSIONER FELLNER: Two questions.

One is just a point of information.

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

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

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

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

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

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

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

COMMISSIONER FELLNER: Uh-huh.

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

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

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

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

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

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

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

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

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

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

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

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

MS. REBEKAH TOSADO: Okay.

COMMISSIONER FELLNER: I had one final question for you.

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

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

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

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

sexual -- of unaccompanied minors in that report?

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

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

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

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

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

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

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

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

COMMISSIONER FELLNER: Thank you.

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

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

COMMISSIONER FELLNER: I would be interested --

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

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

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

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

So they're being well paid for this.

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

Either one of you or both of you.

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

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

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

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

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

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

But I think there also needs to be more

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

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

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

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

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

As nonprofits providing these services, we

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER FELLNER: That's terrific.

Thank you.

CHAIRMAN WALTON: Just one before Commissioner Aiken asks his questions.

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

MS. ILIANA HOLGUIN: A little bit of both. We've actually only recently been allowed access to the Albuquerque facilities and the Otero County facilities.

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

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

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

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

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

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

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

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

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

COMMISSIONER FELLNER: Especially in Louisiana.

CHAIRMAN WALTON: Commissioner Aiken?

COMMISSIONER AIKEN: Mr. Chairman, how are

we looking on time, sir?

CHAIRMAN WALTON: We've got about 15 minutes.

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

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

Okay. We're good.

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

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

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

And what I mean by "tracking" is finding where people are located within these facilities. And I do understand that it's a very transient population. It's moving from Point A to Point B and C and on.

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

And that, in turn, creates some concern

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

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

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

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

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

What have we done in relationship to

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

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

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

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

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

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

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

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

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

El Paso while the detainee is still in Albuquerque.

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

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

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

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

CHAIRMAN WALTON: Many of the federal

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

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

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

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

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

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

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

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

MS. CHRISTINA DE CONCINI: Sure. I understand.

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

CHAIRMAN WALTON: Yes.

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

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

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

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

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

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

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

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

COMMISSIONER KANEB: I mean both. I mean both.

COMMISSIONER FELLNER: Okay.

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

general criminal detained population.

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

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

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

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

We're certainly going to look into it. If

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER FELLNER: But presumably ICE

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

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

COMMISSIONER STRUCKMAN-JOHNSON: Pardon?

COMMISSIONER FELLNER: We're talking about surveys.

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

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

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

COMMISSIONER KANEB: Before Jamie answers

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

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

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

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

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

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

CHAIRMAN WALTON: Okay. We need to stop.

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

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

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

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

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

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

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

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

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

The experts on this panel will discuss the

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

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

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

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

Could you stand, please, and take the oath.

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

MR. SERGIO MEDINA: I do.

MR. CHRISTOPHER NUGENT: I do.

MS. REBEKAH TOSADO: I do.

CHAIRMAN WALTON: Thank you.

And thank you.

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

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

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

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

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

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

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

operated under the former INS.

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

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

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

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

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

at incredibly high risk for abuse and sexual exploitation.

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

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

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

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

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

The stations that they're processed out,

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

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

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

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

that child is placed there.

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

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

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

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

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

and to take follow-up action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Now, if the judge does this, they could declare that this child is a ward of the state.

Now, for immigrant children, this visa sort of is the overlap between that protection and these immigrant children.

And now, if a child is in an ORR facility, in order for them to access this visa, they have to request consent from the Department of Homeland Security, Office of Juvenile Affairs.

Now, a diligent attorney can prepare a summary and say, this is why I find that this child meets the criteria for this visa and also that it's likely that they will be deemed abused, abandoned, or neglected.

So that petition will go to one person in an office of Homeland Security, and that person reviews this petition and can say whether or not he will allow this child to go forward with that application or not.

And that -- that process -- that person, not having any child welfare background, reviewing

very sensitive children's issues, cases, making a decision on whether or not this child can go forward with this case I think is a severe, severe conflict of interest.

And it really hurts child protection in this area. It's probably one of the biggest things that I see as hindering -- you know, any child who had been abused on any point from the time they left their journey, all the way up until being at the shelter, that's a legal protection for them that is often a very difficult thing for them to access.

So as you can see, the situation of these kids is indeed unique. I mean, they don't -- again, don't fit into sort of the classic idea of what's a detainee.

So I would like to thank you for the opportunity to be here and to speak about these children's cases.

CHAIRMAN WALTON: Thank you very much. That was very helpful.

Mr. Nugent?

MR. CHRISTOPHER NUGENT: Thank you, your Honor. It's a privilege and honor to speak before this Commission. I really thank you for caring about including concerns for the vulnerable

population of unaccompanied alien children.

I would concur with my colleague, Sergio, that Office of Refugee Resettlement has made remarkable progress in protecting unaccompanied children in their care, custody, and placement pursuant to the Homeland Security Act of 2002.

But I would like to pan out for a minute to what is going on in the international system.

We have -- Office of Refugee Resettlement inherited a detention system for these children. And what they are doing is just trying to make the detention system better. So you have like 500 children detained at -- several hundred children detained in facilities in Texas without access to pro bono attorneys or guardians, going through immigration proceedings unrepresented.

In the international system the way it works, you don't have these unaccompanied children out of sight, out of mind. They actually are integrated into the communities that they're living in, going to local schools during their immigration processes.

Here we've had a system that has just developed because of INS legacy, INS's approach of creating an economy of scale where it was easier

just to warehouse these children at the border and keep on expanding these facilities. That's what ORR has inherited. And because of financial restraints, they have been sticking with these larger facilities at the border without access to pro bono representation.

The Homeland Security Act of 2002 transferred the care, custody, and placement of these children because of INS's fundamental conflict of interest in acting as police officer, arresting officer, guardian ad litem, and prosecutor against these children and INS's dismal track record, as Sergio had alluded to, of warehousing children in secure facilities.

And it was very interesting back then because when I looked into this issue of how are you holding children in secure facilities with juvenile delinquents in compliance with the JJDPA, the Juvenile Justice Delinquency and Prevention Act, I was told by INS officials, well, we have waivers for all of these facilities to hold these children with -- who are just status offenders with adjudicated delinquents.

And it defied logic, but that was INS's response back then.

So currently, though, the Homeland Security Act, you know, was crafted super quickly based on the pending Unaccompanied Alien Child Protection Act, which is a Feinstein/Brownback bill. And it left a lot of gaps, a lot of gaps which I think -- which I refer to in my testimony as black holes, which I think render children vulnerable to abuse and misconduct by government officials as well as other inmates with relative impunity.

There's been a tension that has been occurring between Office of Refugee Resettlement and the Department of Homeland Security over children's issues. And I think that tension boils down to law enforcement interest over the children in terms of prosecuting and deporting them quickly and upholding the integrity of U.S. immigration law versus child welfare considerations, which Office of Refugee Resettlement takes very seriously.

So the major issues, the major black holes that I've identified that I think the Commission can actually help work on is first classification of unaccompanied children.

Department of Homeland Security acts as the virtual gatekeeper of these children, which children are actually going to go to Office of Refugee

Resettlement custody after they're arrested.

The Department of Homeland Security relies on bone and dental forensics for age determinations, which have a three-year margin of error. So you have a lot of children who are actually children being subject to testing for -- of their bones and their teeth and being classified as adult, who then go to adult detention centers.

And then we have the problem there in the adult detention center, they do not necessarily access pro bono representation, cannot contest that they have been misclassified in an adult facility, but you have vulnerable children who end up in these adult detention centers by virtue of the age determination testing that occurs.

It also admittedly occurs because some children do lie when they're crossing the border. My experience has been that Latino children are sort of told by the smugglers that it's better to say that you're over 18 and that then you can work and you'll get out of custody faster.

And so that also happens. And so then children end up in adult detention facilities, and Department of Homeland Security does not have policies and procedures to redress that.

When they're in these adult facilities, that is where they are very, very vulnerable to, you know, potential sexual abuse by inmates as well as immigration detainees that they're commingled with.

The other classification -- so that -- the other classification issue that's been occurring is what is an unaccompanied child versus what is an accompanied child?

Office of Refugee Resettlement only has jurisdiction over unaccompanied alien children, not children accompanied by their parents or legal guardians to the United States.

But there have been cases where children are picked up in the interior and had been living with their family members and then get classified by Department of Homeland Security as accompanied children. So they're not going to go to ORR custody and not be eligible for the benefits and services in ORR custody.

Department of Homeland Security operates several facilities exclusively holding children, including Berks County, Pennsylvania.

That was a facility that when Office of Refugee Resettlement visited it, they canceled their contract with Berks County because they thought it

was too punitive a setting after a "U.S. News & World Report's" article on the facility.

But Department of Homeland Security maintains a contract with that facility and selectively determines who's accompanied versus who's not accompanied for placement in that facility.

So I don't know if you heard about the case last year. It was widely reported in the "New York Times" about the two girls in New York allegedly who were suicide bombers. Turned out not to be suicide bombers. One ended up back in Bangladesh. The other is currently with her family.

Department of Homeland Security was able to classify them as accompanied because they had family in the United States, parents in the United States. So that is how they were able to put them in Berks County, Pennsylvania, and keep them from Office of Refugee Resettlement in fear that Office of Refugee Resettlement would release them back to their parents, as they're required to, under the Flores v. Reno class-action settlement which governs conditions of confinement.

We really -- advocates don't know how many beds Department of Homeland Security has around the

country for these children, where they end up getting moved about.

I heard about that facility. I also heard about a facility in San Diego that DHS is using for purposes of accompanied children.

Accompanied children also raises the issue that's in my testimony about the new family facility that Secretary Hutchinson referred to and the need for more family-based detention.

That would be for accompanied children who are -- accompanied children who are with their family, their parents, or their legal guardians at the time of the apprehension by Department of Homeland Security.

The Hutto facility is run by Corrections Corporation of America. It's a 500-bed facility. It's a prison that has been retrofitted as a detention center. It's been affectionately referred to by a DHS colleague as "Club Fed with Teddy bears." And the reports we're getting from Hutto facility are very disturbing, from advocates who have been serving families there.

Parents have to -- it's a restrictive setting. Parents have to be with their children at all times. The teachers are not licensed in the

facility. The clinicians are not licensed in the facility. The facility itself is not even licensed under Texas state law because Texas state law has no provisions for licensing a family detention center.

Children have been losing weight in the facility and complaining about not getting enough food. Breakfast, lunch, and dinner consists of ten minutes for each -- for breakfast, lunch, and dinner.

Showers are in the evening, typically, and the water is cold. And air-conditioning is used as a punitive measure. If there's a disciplinary problem in the facility, the air-conditioning is turned up.

So this is a new facility that is being touted by Department of Homeland Security as being humane and an effective way of ending catch and release, but I think it really warrants this Commission's greater investigation.

Conditions of confinement in Border Patrol stations and compliance with Flores in terms of transfer of children from DHS to ORR; that's supposed to happen within a three- to five-day window period.

The -- it is not happening. Congress

has -- Congress and advocates have been outraged over that because it means children are spending longer periods of times in jail-like settings at Border Patrol stations where there is a possibility of commingling with adults, and there is a possibility of sexual abuse in these Border Patrol stations.

Finally, repatriation has been an issue for Congress. And in my testimony I refer to their concern about how DHS is repatriating children to their country of origin without looking into whether they're going to actually be taken care of in their country of origin.

And so, therefore, Congress is recommending that they work on some policies and protocols to have safe repatriation of children.

Finally, in terms of recommendations for this Commission, the Flores v. Reno class-action settlement is currently being promulgated into regulations by Office of Refugee Resettlement and I believe Department of Homeland Security since it governs both.

I think the Commission's input over prevention of sexual abuse of unaccompanied children would be very helpful because currently Flores does

not address that issue and does not provide for, you know, the processes for complaints with confidentiality.

And echoing Sergio, I think, also, we need to think about with the complaint process, what kind of services are the victims actually going to receive beyond just getting confidentiality for complaining vis-a-vis the children.

The Unaccompanied Alien Child Protection Act is also on the verge -- another recommendation for the Commission is on the verge of being reintroduced in Congress. The Unaccompanied Alien Child Protection Act only codifies Flores, provisions in Flores. It does not address this issue of prevention of sexual abuse of unaccompanied children.

And, finally, I think more inquiry in terms of the Mexican children at the border. When we talk about unaccompanied alien children, we're really talking about 8,000 children who are detained, going through immigration removal proceedings.

But at the border, at ports of entry there are over a hundred thousand Mexican children who are just being turned around at the border within 24 to 20 -- typically 24 to 36 hours and where there's

very little oversight and accountability where instances of abuse could occur with complete impunity because of the quick turnaround time that's occurring at the border.

And these children, they've got the right to make a phone call. They don't make the phone call necessarily to a lawyer. And they also have rights to relief from removal, including asylum and special immigrant juvenile protection. But it's another gaping black hole that we're just only starting to learn about because we've been really only focusing on the 8,000 children who are going through removal proceedings who are getting better access to pro bono counsel.

So I thank you very much and look forward to your questions.

CHAIRMAN WALTON: Thank you for your testimony.

Ms. Tosado, if -- Mr. Nugent seems to say it's pretty bleak for children.

MS. REBEKAH TOSADO: He does.

CHAIRMAN WALTON: Do you agree with him?

MS. REBEKAH TOSADO: Well, I would like to provide you some information on the role of our office and what DHS's continued role is in this

area.

I want to emphasize that we have two main missions, and one includes providing proactive legal and policy advice to departmental components, which means a lot of times we need to -- our work needs to be informed by what you are seeing as the impact of policies and procedures on your clients.

So we urge you to bring concerns to us and to ICE directly. And, also, we have a mechanism to investigate and resolve complaints. And many of the issues that you discussed could be addressed through the complaint process.

So the area of unaccompanied minors, population of unaccompanied minors is one my office has been involved in.

You've already heard that the Homeland Security Act -- it transferred responsibility for care and protection of minors to ORR, which means Department of Homeland Security -- that's unaccompanied minors -- no longer has that responsibility for housing a majority of minors. There are some minors that we still do house in some of our facilities, as Mr. Nugent has mentioned.

The DHS responsibilities that we continue to have include apprehension of unaccompanied

minors, their processing either at the ports of entry or at the processing stations, referring the cases to ORR, and managing the court cases, immigration cases.

Just to give you a little bit of an overview of how it happens, how the process works, Customs and border protection officers at the port of entry or the Border Patrol agents that are stationed along the border normally are the law enforcement officials that interact with unaccompanied minors. It could be ICE officers as well in the interior.

When an unaccompanied minor is apprehended, they are transported either to the processing station, unless it's at the port of entry, in which they're held there for a short period of time, or in -- at least for a transitional period.

As I think the two witnesses testified, they're not detention facilities. They're not meant to be detention facilities, and they don't provide the services that one would expect of detention facilities.

But there are some requirements that need to be met. The two things I wanted to mention is that minors are not placed with unrelated adults.

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

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

minors be relocated to an ORR-approved facility as soon as possible.

Our office has been working with these two components within the department to improve conditions, detention for unaccompanied minors, and to expedite the transfer of these minors to ORR.

We've received some complaints and investigative complaints regarding treatment of unaccompanied minors. We have recently issued a final report on recommendations to ICE and Customs and border probation. This is an internal document we talked about before.

And our office will continue to work with the components and with ORR to monitor conditions and treatment of minors in DHS custody.

Thank you.

CHAIRMAN WALTON: The report, the internal report you just referenced, you're saying we would not be able to gain access to that?

MS. REBEKAH TOSADO: Well, sir, the way that our office carries out its responsibilities is to work with the components, to gain access to as much information as we can, and to provide a confidential report that is not released to the complainant.

CHAIRMAN WALTON: But we wouldn't be able to, you say, have access to that?

MS. REBEKAH TOSADO: I don't know, sir, if legally the Commission would have authority to access those reports.

But part of the work that we do is aimed to make those recommendations in a confidential manner so that ICE can improve and CBP and the other components can improve their processes before issues become -- before they get to a level where there is no kind of resolution that can take place outside a courtroom.

CHAIRMAN WALTON: Yeah. I mean, I don't think we would have an interest in breaching the confidentiality objective that you have, but I think we might be interested in knowing what you found.

MS. REBEKAH TOSADO: Uh-huh.

CHAIRMAN WALTON: I think it would be very helpful to us.

COMMISSIONER FELLNER: Would you be able to tell us, since there's no individual complainant involved --

MS. REBEKAH TOSADO: Uh-huh.

COMMISSIONER FELLNER: My understanding is that there's no individual complainant involved in

this report, that you did an assessment of --

MS. REBEKAH TOSADO: No. There were individual complaints, yes.

COMMISSIONER FELLNER: And this is just a response -- investigation on those individual complaints?

MS. REBEKAH TOSADO: Right.

COMMISSIONER FELLNER: Can you summarize what the nature of the complaints were and what the nature of your findings were?

MS. REBEKAH TOSADO: I can't summarize at this time the nature of the findings. And at this point the case is not -- it's not a closed complaint, and so I hesitate to provide any more information.

COMMISSIONER FELLNER: It's just one complaint?

MS. REBEKAH TOSADO: There's one complaint that involves a multitude of unaccompanied minors.

COMMISSIONER FELLNER: And what -- can you say what the problems were that the minors alleged that you have addressed in this report?

MS. REBEKAH TOSADO: I really can't say at this time. It's the -- the complaint remains open, and I can't provide any other information. I'm

sorry.

COMMISSIONER FELLNER: Can we issue a formal request? I find that -- even though that it is open and even if you keep confidential the names of the complainants, I find it hard to believe that it's in the interest of either the minors or your office or the public or anyone else that you not be able to provide the Commission with a sense of what were the nature of the allegations and whether you had some sense as to whether they were founded.

MS. REBEKAH TOSADO: I'm not saying that I'm not able to --

CHAIRMAN WALTON: Well, I don't think we can put her on the hot seat for that.

MS. REBEKAH TOSADO: No. I'm not saying I'm not able to do that at all. Right now I'm not in a position to provide you that information.

CHAIRMAN WALTON: We would ask that if you could find out from your superiors whether that information could be made available to us. I understand in your position you're not at leisure to do that.

COMMISSIONER FELLNER: With as much guarantee, obviously, for the privacy, if they're individual complainants, or people -- specific

officers who --

MS. REBEKAH TOSADO: Well, it is -- I'm happy to look into it some more, but it goes beyond privacy issues of individual complainants. It goes to attorney-client -- the privilege -- we have attorney-client privilege and deliver due process privileges that would apply to this report. But we will try to provide as much information as possible.

CHAIRMAN WALTON: We would appreciate you checking on that and seeing if you could make access, at least to some degree, that information to us.

COMMISSIONER FELLNER: I'm sorry. Are you the -- whose attorney-client -- who's the attorney, who's the client in this when you said attorney-client privilege?

MS. REBEKAH TOSADO: Well, we issue a report from the officer for civil rights and civil liberties, and it goes to the component. And --

COMMISSIONER FELLNER: The component's the client in this case?

MS. REBEKAH TOSADO: The component is the client, yes.

COMMISSIONER FELLNER: Ah. Doesn't that lead sometimes, then, to a mixed agenda for you if

on the one hand you're supposed to be sort of making sure that their civil rights and civil liberties are protected, but on the other hand you represent, you are the client -- the attorney for the entities that you're supposed to be making sure --

MS. REBEKAH TOSADO: It is a unique agency. It's unique within the government, and there are novel issues that have come up in its relationship, especially in providing proactive advice and investigating at the same time.

CHAIRMAN WALTON: It actually is not unique. You find that frequently as it relates to government, because I have those issues brought before me on a fairly regular basis. So it's not unique to what you do.

COMMISSIONER FELLNER: May I then ask another? Do you think -- in your capacity in this office, do you think it would strengthen your ability to protect civil rights and civil liberties of the people who are affected by those agencies if you were not in an attorney-client relationship with the component parts, but you were somehow independent of that; with the same investigative and consultative, but you were not in this particular relationship?

MS. REBEKAH TOSADO: I'm not sure. I think what you're describing is more of an IG role, which is not what we are in the department.

CHAIRMAN WALTON: Commissioner Struckman-Johnson.

COMMISSIONER STRUCKMAN-JOHNSON: Just a general question. Perhaps -- I guess to perhaps first address if you could imagine -- or envision what you think would be a safe environment at the so-called border holdings, what would you recommend be set up to make sure if they're held for -- if kids are there for more than a day or so, what should it look like?

MR. CHRISTOPHER NUGENT: Well, we have given that some thought.

I just think immigration, Customs enforcement should not be involved in the detention of children or detention of families and that there would be a way that they would be able to structure that with nongovernmental organizations, such as the Salvation Army.

Even if they have guards at the perimeter of these facilities, but not -- so that it's not going to be a law enforcement approach and that it will be more sensitive to the vulnerabilities of

both children as well as families.

And there are a lot of nongovernmental organizations with expertise. And if DHS wants to put guards at the perimeter, we would welcome that as opposed to children languishing in Border Patrol station jail cells.

COMMISSIONER STRUCKMAN-JOHNSON: Thank you.

CHAIRMAN WALTON: Commissioner Fellner?

COMMISSIONER FELLNER: Yeah.

Can you -- I'm sort of curious about the Hutto facility. And I was quite surprised to see that parents and children are wearing prison jumpsuits in that.

Now, again, who sets the terms, who monitors, who makes sure that what is going on in Hutto is consistent with the values and principles that are supposedly being followed?

And I would like to know from Ms. Tosado, and I would like to know from you guys.

I mean, how is it that these kids are in jumpsuits? Who made that decision?

And I know we're getting a little afield from sexual abuse, so I wanted to also get back to that and say, are you hearing -- the testimony of everybody so far this morning, I mean, from the

three of you, there has been discussion of sexual abuse, in Mr. Medina's testimony, in terms of as they're being smuggled or brought into the United States.

But we haven't heard anything about abuse of children in the facilities, other than being, you know -- abuses such as the ones that you've mentioned earlier.

Can you address what you know or have heard or concerns or whatever about -- as this Commission's mandate is to focus on sexual abuse in the facilities, not as they're being transported.

Unfortunately, the smugglers are not within our purview, so the "coyotes" escape us.

MR. SERGIO MEDINA: That's a difficult question because I'm not really in a position where I would find out if sexual abuse had occurred. I'm not the person that would be notified. I'm charged with coordinating care for children at the facilities.

So, I mean, that's -- it's in the work that I've done, I haven't come across any direct instances where a child said that I was abused by a staff.

You know, during the ages of 10 to 17, it's

known that it's a time of sexual exploration for children. There's other children there. There may be some sexual behaviors that do come out, but that's part of the normal course of childhood development.

Now, as far as the Hutto facility, I think it's a fairly new facility. And there was from a lot of the advocates saying that, you know, you can't split up families the way that immigration was.

So I think part of the response was to open a family facility, but it's now been discovered that the way it has been opened and the way that the conditions are there -- and I think there was a recent visit by a nonprofit agency to talk to inmates -- to residents and see what's going on, and it doesn't look good.

So I think it's in the process of documenting what are the concerns, what are the issues, and then hopefully, you know, advocating for those to be known and for those to be hopefully addressed in a good way.

COMMISSIONER FELLNER: Do you know what the name of the agency was that went in?

MR. SERGIO MEDINA: It was -- Lutheran

Immigration and Refugee Service was two of my agency -- a couple of -- I don't know who else attended.

MR. CHRISTOPHER NUGENT: The women's commission.

MR. SERGIO MEDINA: Yes, the women's commission for refugee immigrant children.

COMMISSIONER KANEB: Mr. Medina, you say you have, and I'm pleased to hear you have, apparently, easy access to these facilities.

MR. SERGIO MEDINA: Yes.

COMMISSIONER KANEB: And your people do too.

MR. SERGIO MEDINA: Yes.

COMMISSIONER KANEB: I'm pleased to hear that, and what I -- could I -- notwithstanding what you just said, I would infer -- but you tell me if I'm wrong -- that given the easy access that you and people that work with you have, don't you think if there were sexual abuse going on at any significant level, you'd hear about it?

MR. SERGIO MEDINA: I would say probably. I would say probably.

But, you know, the -- you know, going to the shelters and working with the caseworkers,

working with the director of the program, meeting with the children, and trying to get this kid, you know, an attorney, access to a psychiatrist or some medical treatment, mostly all of that is going to revolve around, you know, what's happened to this child up and to the point that they get there.

And I think once they get there -- and especially in this region, in Southern California, the largest facility in this region is 24 beds. And it's a wonderful facility. You know, it's small scale. The kids get individualized attention, and it's not that large warehouse --

COMMISSIONER KANEB: Thank you.

Mr. Nugent, I got lost when you talked about how kids who really are minors wind up being classified as adults, to their detriment.

I did hear you say, well, they may have been advised by their agents to say they're 18 when they're 16. That's somewhat of a problem, I guess. It would -- if not defy solution, would make a remedy difficult.

So what else can ICE do to avoid classifying kids as adults when they are, in fact, children?

MR. CHRISTOPHER NUGENT: Well, that's one

scenario that occurs, where a child lies. And sometimes the child is lying and saying that they're under 18 -- that they're over 18, and then go to the adult facility. There are other cases, actually, where children, particularly Chinese coming in, know that they'll get a better situation if they end up in ORR custody because they'll be releasable if they're picked up at a port of entry.

So you have some Chinese 20-plus-year-olds claiming to be children so they go to ORR.

COMMISSIONER KANEB: So the classification is the system is failing. But what's the solution?

MR. CHRISTOPHER NUGENT: Well, the major -- the way this is happening, I think, for most instances is because of DHS's reliance on bone -- on forensic testing of children's teeth and children's wrists, which has a three-year margin of error.

And so you have children ending up being misclassified and sent to the adult facilities.

COMMISSIONER KANEB: But they don't have birth certificates. They may be lying. And there's a three-year margin of error.

Is there something we can -- what's the solution?

MS. REBEKAH TOSADO: Sir, if I may, and,

Chris, you may be aware of this.

ICE has a policy in place on making age determinations. It does allow for the wrist X ray and teeth X rays, as well, but as one of a number of factors.

So there is a policy in place, but the wrist and teeth X ray is not the determinant factor. It may depend on a number of issues, including what the minor -- what the minor says his age is.

COMMISSIONER KANEB: Our primary interest here is avoiding having children put into an adult facility where they might be more likely to be sexually abused.

MR. CHRISTOPHER NUGENT: Okay. Well, Department of Homeland Security is the only government agency, to my knowledge, in the U.S. Government that relies on bone and forensic testing of children.

Congress has directed Department of Homeland Security to use holistic age determination methodologies recommended by medical and child welfare experts.

That would include psychological evaluations of the children to really sort of get a sense of it. Because the dental has been exposed in

the "New York Times." And the dentist in New York who does this gets $500 per kid, has a globe, and has a book of pictures of children and then bases that this child is a child or is an adult.

And it's been referred to by Public Health Service, when I met with them several years ago, as junk science. And they could not understand why DHS would be paying $500 for these dental and bone exams.

And I realize it is only one factor. And there are a lot of other factors.

COMMISSIONER KANEB: I don't want to trivialize this or take too much more time.

I must say that my entrepreneurial instincts have been, let's say, aroused here. At $500 a case, I'll bet I could, with some expert help, come up with some clinics that could do a better job. So I'll see you afterwards.

Thank you.

CHAIRMAN WALTON: Commissioner Aiken.

COMMISSIONER AIKEN: Just one question with two parts.

Your shop of director of review and compliance in the Office of Civil Rights and Civil Liberties, what is your formal relationship with the

policymakers and interpreters in that agency, using an example of something that you have discovered in the agency that needs direct and appropriate attention, i.e., pertaining to sexual abuse of children, for example?

After understanding that formal relationship, what are some suggestions or observations that would improve that, if necessary, to make sure that it's a seamless, productive relationship?

MS. REBEKAH TOSADO: Well, our goal is to be integrated to the work of the department policymaking.

I myself am not involved in that anymore. I'm just focusing on complaints. And now at the outcome of complaints when we have recommendations that can have systemic impact, we will address this at a policy level.

But we do have policy advisors in the office that are responsible for engaging that proactive advice, looking at regulations, having discussions about different immigration proposals and that kind of thing.

When Mr. Hutchinson was the Undersecretary, he included us as part of his staff, though we

report directly to the secretary and we're independent of his office.

So we had that relationship established, and we have a relationship with the director of policy, of immigration policy for the Department of Homeland Security.

And we have people on my staff in my office that participate in those meetings and exchange information and provide advice on issues that are ongoing.

COMMISSIONER AIKEN: So I'm still a little confused.

There is a burning issue in relationship to policy development and policy interpretation. And it's generated and discovered and detected from your particular office in relationship to, i.e., complaints that are validated concerning sexual abuse.

MS. REBEKAH TOSADO: Uh-huh.

COMMISSIONER AIKEN: Where does that go into the chain of command and how are you connected to the responsible authority to interpret, develop, implement, monitor changes in policy?

MS. REBEKAH TOSADO: Good question.

As I said, the officer for civil rights

reports directly to the secretary of Homeland Security. So that is -- there's a direct line, direct chain to the secretary to report on our findings or to report on our concerns about a piece of legislation or law enforcement operation.

There's not a mechanism that requires our office to sign off on any particular operation or legislation that's pending in order for the department to go ahead with it.

COMMISSIONER AIKEN: I certainly understand that, and I'm not going to belabor it anymore.

I'm just saying, you're telling me that there is a burning issue that you have discovered. And you have direct, untethered access to the director of Homeland Security for that individual to consider what you have found and policy recommendations, if necessary, to remedy the situation. And you have direct uninhibited access to that particular office.

Is that correct?

MS. REBEKAH TOSADO: Well, the officer for civil rights has direct access to that office.

COMMISSIONER AIKEN: I'm talking about not just you, but that office, whoever's over that office.

MS. REBEKAH TOSADO: Yes. Yes.

COMMISSIONER AIKEN: Okay. Are there any recommendations or observations that anyone would have that would further improve, if necessary, that particular relationship?

MS. REBEKAH TOSADO: I can't think of any at this time.

I know that there's a lot of demands on the secretary and his time. But I know there's an effort to continue to integrate our office into all the operations of the department, whether it be an impact on civil rights and civil liberties.

COMMISSIONER AIKEN: I understand.

Are there any other observations, suggestions?

MR. CHRISTOPHER NUGENT: And I think Rebecca can address this, but I'm not sure how the Office of Civil Rights and Civil Liberties interacts with the directorate of policy, where policy is set and where there is actually a refugee coordinator that deals with asylum and refugee issues and how -- what kind of relationship you have there.

And would a promotion to being in the policy directorate help the stature of the Office of Civil Rights and Civil Liberties in terms of

integrating the policy work?

MS. REBEKAH TOSADO: I don't know. We are a direct report to the secretary, just like the director of policy is.

CHAIRMAN WALTON: Commissioner Fellner?

COMMISSIONER FELLNER: Yeah.

I wanted to follow up on two things there on the role of your office. One -- and following up on what Jim said. How do you monitor or how do you determine whether, in fact, the agency has responded appropriately to your findings?

For example, you have submitted now a final report which presumably has findings.

Do you follow up to see, what, in fact, has been done and do you keep working, and if so, how, to make sure that the agency takes what you think are the right steps in response?

That's one question.

And the second question is, how do you monitor what is, in fact, happening in the field?

Do you only -- does your office -- not just you, but do you only respond to complaints that come up either through those quarterly meetings that you described or whatever, or do you yourself, your own office go out and conduct some kind of interview or

review process from your own particular perspective separate from the other mechanisms that were discussed earlier today?

MS. REBEKAH TOSADO: Well, I want to start by saying that I'm the director. I have two senior policy advisors and one investigator. That is the staff of the Office for Civil Rights and Civil Liberties.

Monitoring is very important.

COMMISSIONER FELLNER: That's the entire office?

MS. REBEKAH TOSADO: We have some contract staff as well. That's the entire review and compliance team within the office.

COMMISSIONER FELLNER: So wouldn't one of your recommendations in response to what Jim said be that you -- to really do the job that Congress and the American public anticipated in setting up this office is you would have to be a heck of a lot bigger?

MS. REBEKAH TOSADO: As I said before, I did say that we need more staff and more resources.

COMMISSIONER FELLNER: I don't think any of us realized how small --

MS. REBEKAH TOSADO: Yes, we're very small.

COMMISSIONER FELLNER: -- tiny.

MR. SERGIO MEDINA: If I may add.

ORR has issued some guidance to all the shelters that they work with nationally. And the shelters are spread out all over the U.S.

Often a child, if they have been mistreated at the Border Patrol station or at any point before getting to ORR, ORR has asked the shelters to send that out -- to write it up and to send it in sort of a report format and that they would be working with your office and also with the Inspector General to follow up on those claims.

So, you know, once the child gets at the shelter, they realize that they're safe, they have some warm milk and cookies, or they feel that they're okay, maybe a week, two weeks later they'll say, oh, by the way, the Border Patrol agent I feel mistreated me in "x" way.

So I think that's one way that can help the kids be able to -- when they do feel safe, make it known that they feel that they have been mistreated.

As far as the result and the outcome of the investigation, I haven't heard of any final resolutions. But I think I'm encouraged that everyone is aware that it should be documented, well

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

children should be secured has no background in child welfare?

MS. REBEKAH TOSADO: That's not correct. He has extensive background in child welfare.

MR. CHRISTOPHER NUGENT: Advocates will contend that it's from a law enforcement perspective first and from a juvenile delinquency model as opposed to a child welfare model in dependency proceedings.

CHAIRMAN WALTON: What background does that person have, if you know?

MS. REBEKAH TOSADO: I actually don't -- I don't have his -- the details on his background, but I know that --

MR. SERGIO MEDINA: He's sort of the juvenile coordinator program nationwide. I see him as sort of the figure of sort of the lead juvenile coordinator. And they may have some experience working with children, but it doesn't necessarily mean that they have a child welfare background.

For example, I've seen a consent request denied for a child. The notes that he put said that the child had a conversation with his mother and they noted that -- on the case notes that the file was sent for him to review.

Well, he used that as a basis to say that this child, if he had been abused by this mother, would never want to speak to this mother. And he denied the consent request.

So, I mean, there's a list. We're also compiling -- my agency's compiling a list of 50 different incidences of absurd bases for denial for these consent requests, which makes us think that he's not that sensitive to these kids' issues, and it seems like he's missing something there.

MR. CHRISTOPHER NUGENT: As a footnote, there are no written criteria or regulations on this consent process or appeal process. And, also, there is published case law in the federal district courts on several mandamus actions reversing his decisions for being arbitrary and capricious and their reasoning and not accessing witness testimony.

CHAIRMAN WALTON: Okay. Anything else?

COMMISSIONER FELLNER: Can I go into a different -- I asked earlier about sexual abuse, and there seems to have been -- for various reasons you've also -- don't have a sense of to what extent it is or is not present in the unaccompanied minors.

What about physical violence beyond sexual abuse? Just to explore a little bit.

Are you getting stories of children either having a lot of fights between themselves or staff using excessive force on the children? Or let's just broaden this up a bit to see -- I'm curious of what you are hearing in terms of the treatment of children in these facilities more broader.

MR. SERGIO MEDINA: I can only speak to the State of California. In the State of California if you operate a licensed basic shelter, staff are unauthorized -- they cannot touch children for any reason other than a pat on the back. There's no sort of -- and that's regulated that way.

I haven't come across any staff-to-child physical abuse incidences. And I also work in the Southern California region. So I don't work with every single shelter in the U.S.

Child on child, though -- you know, some of the kids that we provide care for have really, really difficult histories. Some have lived on the streets since the age of 5. Some have grown up in really violate households. And they'll come to the shelter and they'll act out and there's behavioral manifestations for that.

And I can safely say that the staff there at the shelters, you know, really do their best to

intervene in a way that respects the child, that's not punitive in any way.

There's some sort of -- really sort of modern intervention techniques to work with kids who have behavioral issues other than punishment.

And I think that those are being well used. But I guess in short, I don't see what you asked.

COMMISSIONER FELLNER: Chris, what do you see -- or hear?

MR. CHRISTOPHER NUGENT: I've heard of incidents similar to what Sergio was alluding to, about children acting out, which could get construed as child-on-child abuse and sometimes sexually aggressive behavior by different teenage children in the facilities.

ORR's response, though, is not to -- INS's response would be to send this child to a super secure facility as a first resort.

ORR's response is let's work with the clinicians on staff to see if there are different sanctions that can be employed and that the child could still stay here and then think about a continuum of the different programs.

And ORR -- the other benefit of ORR's approach is that if a child does get sent to a

medium secure facility and starts to rehabilitate, he can go back to a shelter care facility afterwards.

So they're constantly monitoring the custody of the children to figure out what the appropriate placement would be, as opposed to just leaving them in a secure facility forever, even though the child is actually demonstrating positive behavior.

The other issue I just wanted to flag, though, on privacy and confidentiality --

COMMISSIONER FELLNER: Wait. Would you -- you were talking about child-on-child misconduct. What about staff-on-child misconduct, whether it be -- you're saying not in the small shelters, but you have knowledge of other facilities and larger ones.

Is that a problem or is the staff well trained and well disciplined and well -- you know, following professional rules of conduct?

MR. CHRISTOPHER NUGENT: They're being better trained than when the facilities were under INS. But a lot of the facilities are the same contractors that INS used.

But the clinicians, for example, when I was

in El Paso, Texas, were feeling pretty -- under a lot of pressure by ORR in taking a much more comprehensive approach in terms of helping the child with their psychological and mental health needs than before.

And some of the teachers were also very impressed by ORR sort of encouraging vocational training and very different things that they would not do previously.

So there has been a lot of staff attrition at these facilities. So they're getting newer people who are getting acculturated from a child welfare approach. So I think that's positive.

I have not heard, though, of sexual -- recently of any sexual abuse incidents involving adults and children.

In the '90s there was a lawsuit, and I think a criminal complaint out of a facility in Chicago involving shelter care staff and that was very hush-hush and people didn't discuss it afterwards.

But I think it goes to privacy and confidentiality issues because the other thing that we're contending with is that, you know, a lot of the children are instructed by their attorneys not

to speak with the clinicians at the facilities because ORR doesn't have confidentiality of their information vis-a-vis the Department of Homeland Security.

So any of the clinician's notes can end up in the immigration proceedings and being used against them. And the same thing in terms of complaints and coming forward.

Some attorneys might be telling the children, you have a complaint. Better not bring it up here. Let's get you out of custody, and then we'll evaluate the potential of a lawsuit.

And that's been something that also comes up in adult cases all the time. Like, there's been a rash of detainees dying in immigration custody around the country over the last few years.

And somebody contacted me for advice and was, you know, talking about getting the OIG to investigate or getting civil rights to investigate.

And my advice was, well, if you're going to do a lawsuit, probably best that you get the lawsuit filed, and then OIG and civil rights could get involved as a strategy because, you know, the paperwork of OIG and civil rights is not necessarily going to help you in a wrongful death action.

CHAIRMAN WALTON: Anything else?

Okay. Well, we, again, thank this panel. You provided us with some valuable information. There may be additional questions that we'd like to pose to you. And if we do, we would ask that you please respond to them.

This is our last panel on the immigration detention issue. And I think we received a wealth of information that will help us tremendously as we proceed with our assessment of what we should be recommending be done to address this particular population.

So we thank you very much for your input.

Okay. We'll take ten minutes. Come back in ten minutes to 4:00.

(Recess taken from 3:36 p.m. to 3:51 p.m.)

CHAIRMAN WALTON: Okay. We can get started. We're a little early, which is good, on our last panel. I know I'm a little tired, and I'm sure everybody else is, but we are -- we welcome the next panel, which will be speaking on the role of staff in prisons and detention facilities and eliminating prison rape.

Would our two witnesses please stand and

take the oath.

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

MR. MICHALE BERANBAUM: I do.

MR. TIXOC MUNIZ: I do.

CHAIRMAN WALTON: Thank you.

The next panel and the panels tomorrow will devote -- are devoted -- I'm sorry -- to hearing from those who represent line correctional officers. We will be hearing from several different unions through the representations of local presidents, business agents, and division presidents.

Last March this Commission heard largely from correction officials in management positions. Since the role of line staff is so crucial to how prison rape can be eliminated, it is essential for us to hear from those who deal with inmates on a day-to-day basis at the actual detention level.

The first panel that we'll hear from today will primarily address the issue of the type of training that's most effective in acquiring staff support for measures aimed at eliminating prison rape.

Hopefully our witnesses today will also be able to provide some insight about the level of training that thus far has been made available to correctional officers.

Tomorrow's panels will explore the role of staff in reporting and -- in the reporting and investigation of sexual assault cases as well as the impact administrative disciplinary procedures can have on the incidence of misconduct in the prison setting.

Mr. Michael Beranbaum is the director of representation for the Department of Corrections bargaining unit, Teamsters Local 117, in Tukwila, Washington. And Mr. Tixoc, I guess that is, Muniz is the President of the Arizona Correctional Peace Officers Association.

I thank both of you for your presence here today, and we'll hear from Mr. Beranbaum first.

MR. MICHAEL BERANBAUM: Thank you. Mr. Commissioner, distinguished members of this Commission, it's my pleasure to be here today to testify on behalf of the 17,000 members of our local union throughout the state of Washington, including over 5,000 of whom are employed by the state Department of Corrections.

Over the past 15 years, I've held various positions within two Teamster locals, where I've acquired worthwhile experience representing members in all facets of public safety.

Currently, I am the director of representation of the Department of Corrections bargaining unit at Teamsters Local 117, which is the third largest local union in the International Brotherhood of Teamsters.

As director I oversee a team of professional business representatives, attorneys, and a full-time lobbyist, all of whom are responsible for the daily representation of correction employees working in 13 institutions throughout the entire state of Washington.

By way of background, the Department of Corrections facilities vary in size and function. For example, you have the Monroe Correctional Complex, which actually houses four separate institutions within its complex, each with its own separate custody level, including a sex offender treatment program.

And you also have in the state of Washington, the Walla Walla -- in Walla Walla, Washington, the Washington State Penitentiary.

Both of these institutions employ over 1100 line staff each.

We also have in the state several facilities which are what are considered to be work camps, such as Larch Corrections Center in Yacolt and Olympic Corrections Center in Forks, Washington, with approximately 200 correctional staff each. So it really varies, and we have the full gamut of facilities.

As to the Prison Rape Elimination Act of 2003, Teamsters Local Union No. 117 and the DOC members we represent accept the goal of zero tolerance for the acts of rape and other forms of sexual misconduct within prisons and jails.

In the statement offered that you will hear later, if you haven't already received that, from Carl E. Haynes, who is the vice President at large and the director of the public services division of the International Brotherhood of Teamsters, he reminds us that ongoing training will help to foster a work culture where sexual misconduct is not tolerated. We cannot achieve the goals of PREA through an unfunded mandate.

And I'm going to vary a little bit from what I heard -- or what I've submitted in written

testimony only to reiterate, I heard a lot of testimony today about all of the important things that are needed.

But ultimately none of them can be implemented without funding, and that is an important part of what this Commission can move to ask for.

Currently new correctional line staff at the state of Washington, Department of Corrections, participate in a six-week academy. In addition to that, they have annually 40 hours of in-service training each year.

It's our belief that there should be a national strategy to the design and delivery of both the initial and ongoing training programs, which should include, from our perspective, the following areas:

One, training of line staff at correctional institutions to recognize the behavior which leads to prisoner-on-prisoner rape and effective techniques and strategies to deal with the aggressors.

Two, there should be joint training between the correctional line staff, individuals responsible for the investigation of allegations of

prisoner-on-prisoner rape, and those entrusted with the prosecution of such crimes to ensure that justice is effectively carried out.

Three, we believe that training of prisoners on the punishments associated with institutional rape and the making of false allegations against fellow prisoners and staff.

Fourth, training of correctional line staff to clearly define both the actions which constitute sexual misconduct and the punishments for involvement in such actions.

And, finally, the fifth aspect would be training of correctional line staff on the manipulative nature of the prisoners and how to detect the warning signs that a coworker may be falling prey to such behavior.

In order to ensure appropriate and consistent levels of training throughout the country, time and money are important elements to accomplish PREA's goals.

Within the state of Washington, Department of Corrections, every single hour of the academy and the in-service training is already allocated for courses necessary for the employees to succeed in their chosen profession.

None of the subjects can be eliminated to create time for effective PREA training.

Moreover, the current requirements exhaust the yearly budget dedicated for training.

Under the circumstances, PREA training can only be accomplished with assistance from the Federal Government.

I also believe that there needs to be a strong statement from this Commission endorsing joint labor management commitment to the type of training described above.

An effective labor management relationship is founded on trust and mutual respect, which is built over time.

Our union has experienced continuing maturity in its relationship with the Washington State Department of Corrections, which continues to strengthen and grow with each successive collective bargaining agreement.

We have been able to work collaboratively with each other over issues like the expansion of a small work camp of approximately 200 beds to what will be an institution of over 1800 beds, to the opening of a brand-new facility.

Local Union 117 has also had success in

gaining member support for significant institutional initiatives, such as creations of drug- and alcohol-free workplace.

Training, though, is not the only factor that is necessary to reach the important goals of eliminating rape. We must ensure there's an appropriate ratio of staff to inmates in each correctional facility.

In this country, technology, such as surveillance cameras, which we heard people speak to this morning as an important goal, are only a piece and a part. If you don't have the appropriate staff levels in order to watch what's being recorded on the tapes and then to act upon what you see, it doesn't work alone. It needs to be done hand in hand.

In our mind, the strongest deterrent is to have a well-trained staff on the ground involved in what's going on in the institution grounds on the floor.

It should come as no surprise that the solution to the type of progress and vision by PREA requires money. Funding for proper staffing levels, salaries, and employee benefits must be a meaningful aspect of the department's budget.

The Federal Government should make funds available to those agencies that embrace the program.

We must be able to hire competent personnel and properly compensate them commensurate with the level of trust and the responsibility necessary to protect our communities.

What should be done to ensure the corrections personnel are protected? All too frequently our members' work lives are impacted by the manipulative nature of inmates in their charge.

Although the occurrence of custodial rape is comparatively rare, the false, unsubstantiated allegations of inmates are more frequent and can have a career-ending impact on staff.

Within correctional institutions, respect and integrity are an integral part of success. Once clouded by unfounded allegations, many staff believe their careers are forever damaged.

The Commission should work to ensure that correctional line staff are treated fairly during the often lengthy investigative stage, which more often than not exonerates the staff involved.

Our members are trained to be firm, fair, and consistent in their dealings with the prisoners,

and they're not always afforded the same level of respect from their employers.

Innocent until proven guilty must be the guiding principle, and the result of a thorough investigation must be evaluated against the just cause standard.

All too often, we have cases within Washington State DOC where prisoners raise allegations of inappropriate conduct against staff. And the first assumption by the agency is that the employee is guilty.

We recently had a case which is right on point with this. A custody officer at the McNeil Island Corrections Center in Steilacoom, Washington, was accused by an inmate of inappropriate conduct.

The officer was immediately assigned to home while the agency conducted its investigation. At the conclusion of the investigation, the employee was exonerated of the charges by the inmate.

The investigation and determination took more than nine months. During this time the agency continued to compensate him, yet he was harmed, both monetarily and emotionally.

The officer lost overtime opportunities and was affected personally by having to explain to his

family and his friends why he was not allowed to go to work.

Situations like the one I just described are not an anomaly.

I believe that if there were a standard for fair and timely investigations achieved legislatively and/or through collective bargaining, the McNeil Island example would become a rarity.

Moreover, we found that in agencies where employees have both a union and the legal right to full collective bargaining, staff are better compensated and have a higher sense of self-esteem and dedication to the job.

In closing, the members of my local union wish to reiterate that they are fully supportive of the goals of PREA and urge you to ensure that corrections personnel throughout this country are provided with the best training and support to make these goals a reality.

CHAIRMAN WALTON: Thank you very much for your testimony.

Mr. Muniz.

MR. TIXOC MUNIZ: Well, I just want to see if I can get his because that's what I'm going to say.

I want to add that we are camp facilities inside Arizona. We are 10,000 employees. We have the same issues that he has.

The difference is that our director is pro union. She meets with us monthly. And she got a labor group, one from each unit. We meet with her monthly. We bring the issues to her, so she knows firsthand what's happening in each one of the units.

And the case like he's describing with -- that inmates are making accusations to officers, I will tell you that it's nothing new. It does happen.

But with this new director we have, what happened is when somebody's accused is removed from having contact with the inmate, but still work in the complex without having made contact.

And the investigations go to 90 days is real fast. And the core discipline is handed to the inmate that make an accusation. And I think that would be better to the taxpayers to have the officer at least working in another capacity instead of just sending him home and face the thing he was just talking about right now, being at home and explaining why he's there.

In the state of Arizona, PREA has been

implemented for the last two years. Since our new director we have, which is per union before the other one, the first report cases, there were 20 before she became our director, 20 cases or 20 allegations of rape within ten institutions.

And her leadership with the last three years, it reduced to four allegations not sustained to this moment which shows that PREA works. And her policies and new training that we're taking right now is working.

We face the same training he's talking about. We get nine weeks' training before we become correctional officers, 40 hours a week. Plus we take every 15 days and 40-minute break, we take a small class of 10 minutes of PREA, that, you know, don't cross the line inmate-staff relation.

One of the things that I want to add as I was listening to other people speaking is that not only the abuse always occur between a staff and inmates. Sometimes it's among inmates, which is important to part of the PREA, to keep that clean.

And it is most likely the moment when I come to you and inspect because I make them wait, to say what just happened, it's embarrassed to tell another man you just got raped by another inmate.

So our director implement new policies and procedures due to listen to the officers, you know, changing policies. Most of the policies they change in the Department of Corrections in Arizona is due to the meetings with the labor groups from our director.

We bring the opinions, the ideas, why it's important to change it. We told her from the field what works, what doesn't work. And she immediately in 15 days will make the reaction and change it. So we are lucky to have her as a director.

I must add that as we go along between labor group and management in the state of Arizona, we have a very good relation. We have the ability to communicate in my case as executive president for the whole state of Arizona. I got a phone line directly to the director for an issue like that.

Yes, we do have cases with officers get accused. But we are smart enough to figure it out fast if he makes sense or not. And we always go to the director, and if it would make sense, she would react immediately.

So other than that, just for your questions.

CHAIRMAN WALTON: What is the starting