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1 minors be relocated to an ORR-approved facility as  
2 soon as possible.

3 Our office has been working with these two  
4 components within the department to improve  
5 conditions, detention for unaccompanied minors, and  
6 to expedite the transfer of these minors to ORR.

7 We've received some complaints and  
8 investigative complaints regarding treatment of  
9 unaccompanied minors. We have recently issued a  
10 final report on recommendations to ICE and Customs  
11 and border probation. This is an internal document  
12 we talked about before.

13 And our office will continue to work with  
14 the components and with ORR to monitor conditions  
15 and treatment of minors in DHS custody.

16 Thank you.

17 CHAIRMAN WALTON: The report, the internal  
18 report you just referenced, you're saying we would  
19 not be able to gain access to that?

20 MS. REBEKAH TOSADO: Well, sir, the way  
21 that our office carries out its responsibilities is  
22 to work with the components, to gain access to as  
23 much information as we can, and to provide a  
24 confidential report that is not released to the  
25 complainant.

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1           CHAIRMAN WALTON:  But we wouldn't be able  
2 to, you say, have access to that?

3           MS. REBEKAH TOSADO:  I don't know, sir, if  
4 legally the Commission would have authority to  
5 access those reports.

6           But part of the work that we do is aimed to  
7 make those recommendations in a confidential manner  
8 so that ICE can improve and CBP and the other  
9 components can improve their processes before issues  
10 become -- before they get to a level where there is  
11 no kind of resolution that can take place outside a  
12 courtroom.

13          CHAIRMAN WALTON:  Yeah.  I mean, I don't  
14 think we would have an interest in breaching the  
15 confidentiality objective that you have, but I think  
16 we might be interested in knowing what you found.

17          MS. REBEKAH TOSADO:  Uh-huh.

18          CHAIRMAN WALTON:  I think it would be very  
19 helpful to us.

20          COMMISSIONER FELLNER:  Would you be able to  
21 tell us, since there's no individual complainant  
22 involved --

23          MS. REBEKAH TOSADO:  Uh-huh.

24          COMMISSIONER FELLNER:  My understanding is  
25 that there's no individual complainant involved in

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1 this report, that you did an assessment of --

2 MS. REBEKAH TOSADO: No. There were  
3 individual complaints, yes.

4 COMMISSIONER FELLNER: And this is just a  
5 response -- investigation on those individual  
6 complaints?

7 MS. REBEKAH TOSADO: Right.

8 COMMISSIONER FELLNER: Can you summarize  
9 what the nature of the complaints were and what the  
10 nature of your findings were?

11 MS. REBEKAH TOSADO: I can't summarize at  
12 this time the nature of the findings. And at this  
13 point the case is not -- it's not a closed  
14 complaint, and so I hesitate to provide any more  
15 information.

16 COMMISSIONER FELLNER: It's just one  
17 complaint?

18 MS. REBEKAH TOSADO: There's one complaint  
19 that involves a multitude of unaccompanied minors.

20 COMMISSIONER FELLNER: And what -- can you  
21 say what the problems were that the minors alleged  
22 that you have addressed in this report?

23 MS. REBEKAH TOSADO: I really can't say at  
24 this time. It's the -- the complaint remains open,  
25 and I can't provide any other information. I'm

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1 sorry.

2 COMMISSIONER FELLNER: Can we issue a  
3 formal request? I find that -- even though that it  
4 is open and even if you keep confidential the names  
5 of the complainants, I find it hard to believe that  
6 it's in the interest of either the minors or your  
7 office or the public or anyone else that you not be  
8 able to provide the Commission with a sense of what  
9 were the nature of the allegations and whether you  
10 had some sense as to whether they were founded.

11 MS. REBEKAH TOSADO: I'm not saying that  
12 I'm not able to --

13 CHAIRMAN WALTON: Well, I don't think we  
14 can put her on the hot seat for that.

15 MS. REBEKAH TOSADO: No. I'm not saying  
16 I'm not able to do that at all. Right now I'm not  
17 in a position to provide you that information.

18 CHAIRMAN WALTON: We would ask that if you  
19 could find out from your superiors whether that  
20 information could be made available to us. I  
21 understand in your position you're not at leisure to  
22 do that.

23 COMMISSIONER FELLNER: With as much  
24 guarantee, obviously, for the privacy, if they're  
25 individual complainants, or people -- specific

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1 officers who --

2 MS. REBEKAH TOSADO: Well, it is -- I'm  
3 happy to look into it some more, but it goes beyond  
4 privacy issues of individual complainants. It goes  
5 to attorney-client -- the privilege -- we have  
6 attorney-client privilege and deliver due process  
7 privileges that would apply to this report. But we  
8 will try to provide as much information as possible.

9 CHAIRMAN WALTON: We would appreciate you  
10 checking on that and seeing if you could make  
11 access, at least to some degree, that information to  
12 us.

13 COMMISSIONER FELLNER: I'm sorry. Are you  
14 the -- whose attorney-client -- who's the attorney,  
15 who's the client in this when you said  
16 attorney-client privilege?

17 MS. REBEKAH TOSADO: Well, we issue a  
18 report from the officer for civil rights and civil  
19 liberties, and it goes to the component. And --

20 COMMISSIONER FELLNER: The component's the  
21 client in this case?

22 MS. REBEKAH TOSADO: The component is the  
23 client, yes.

24 COMMISSIONER FELLNER: Ah. Doesn't that  
25 lead sometimes, then, to a mixed agenda for you if

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1 on the one hand you're supposed to be sort of making  
2 sure that their civil rights and civil liberties are  
3 protected, but on the other hand you represent, you  
4 are the client -- the attorney for the entities that  
5 you're supposed to be making sure --

6 MS. REBEKAH TOSADO: It is a unique agency.  
7 It's unique within the government, and there are  
8 novel issues that have come up in its relationship,  
9 especially in providing proactive advice and  
10 investigating at the same time.

11 CHAIRMAN WALTON: It actually is not  
12 unique. You find that frequently as it relates to  
13 government, because I have those issues brought  
14 before me on a fairly regular basis. So it's not  
15 unique to what you do.

16 COMMISSIONER FELLNER: May I then ask  
17 another? Do you think -- in your capacity in this  
18 office, do you think it would strengthen your  
19 ability to protect civil rights and civil liberties  
20 of the people who are affected by those agencies if  
21 you were not in an attorney-client relationship with  
22 the component parts, but you were somehow  
23 independent of that; with the same investigative and  
24 consultative, but you were not in this particular  
25 relationship?

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1 MS. REBEKAH TOSADO: I'm not sure. I think  
2 what you're describing is more of an IG role, which  
3 is not what we are in the department.

4 CHAIRMAN WALTON: Commissioner Struckman-  
5 Johnson.

6 COMMISSIONER STRUCKMAN-JOHNSON: Just a  
7 general question. Perhaps -- I guess to perhaps  
8 first address if you could imagine -- or envision  
9 what you think would be a safe environment at the  
10 so-called border holdings, what would you recommend  
11 be set up to make sure if they're held for -- if  
12 kids are there for more than a day or so, what  
13 should it look like?

14 MR. CHRISTOPHER NUGENT: Well, we have  
15 given that some thought.

16 I just think immigration, Customs  
17 enforcement should not be involved in the detention  
18 of children or detention of families and that there  
19 would be a way that they would be able to structure  
20 that with nongovernmental organizations, such as the  
21 Salvation Army.

22 Even if they have guards at the perimeter  
23 of these facilities, but not -- so that it's not  
24 going to be a law enforcement approach and that it  
25 will be more sensitive to the vulnerabilities of

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1 both children as well as families.

2 And there are a lot of nongovernmental  
3 organizations with expertise. And if DHS wants to  
4 put guards at the perimeter, we would welcome that  
5 as opposed to children languishing in Border Patrol  
6 station jail cells.

7 COMMISSIONER STRUCKMAN-JOHNSON: Thank you.

8 CHAIRMAN WALTON: Commissioner Fellner?

9 COMMISSIONER FELLNER: Yeah.

10 Can you -- I'm sort of curious about the  
11 Hutto facility. And I was quite surprised to see  
12 that parents and children are wearing prison  
13 jumpsuits in that.

14 Now, again, who sets the terms, who  
15 monitors, who makes sure that what is going on in  
16 Hutto is consistent with the values and principles  
17 that are supposedly being followed?

18 And I would like to know from Ms. Tosado,  
19 and I would like to know from you guys.

20 I mean, how is it that these kids are in  
21 jumpsuits? Who made that decision?

22 And I know we're getting a little afield  
23 from sexual abuse, so I wanted to also get back to  
24 that and say, are you hearing -- the testimony of  
25 everybody so far this morning, I mean, from the



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1 three of you, there has been discussion of sexual  
2 abuse, in Mr. Medina's testimony, in terms of as  
3 they're being smuggled or brought into the United  
4 States.

5 But we haven't heard anything about abuse  
6 of children in the facilities, other than being, you  
7 know -- abuses such as the ones that you've  
8 mentioned earlier.

9 Can you address what you know or have heard  
10 or concerns or whatever about -- as this  
11 Commission's mandate is to focus on sexual abuse in  
12 the facilities, not as they're being transported.

13 Unfortunately, the smugglers are not within  
14 our purview, so the "coyotes" escape us.

15 MR. SERGIO MEDINA: That's a difficult  
16 question because I'm not really in a position where  
17 I would find out if sexual abuse had occurred. I'm  
18 not the person that would be notified. I'm charged  
19 with coordinating care for children at the  
20 facilities.

21 So, I mean, that's -- it's in the work that  
22 I've done, I haven't come across any direct  
23 instances where a child said that I was abused by a  
24 staff.

25 You know, during the ages of 10 to 17, it's

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1 known that it's a time of sexual exploration for  
2 children. There's other children there. There may  
3 be some sexual behaviors that do come out, but  
4 that's part of the normal course of childhood  
5 development.

6 Now, as far as the Hutto facility, I think  
7 it's a fairly new facility. And there was from a  
8 lot of the advocates saying that, you know, you  
9 can't split up families the way that immigration  
10 was.

11 So I think part of the response was to open  
12 a family facility, but it's now been discovered that  
13 the way it has been opened and the way that the  
14 conditions are there -- and I think there was a  
15 recent visit by a nonprofit agency to talk to  
16 inmates -- to residents and see what's going on, and  
17 it doesn't look good.

18 So I think it's in the process of  
19 documenting what are the concerns, what are the  
20 issues, and then hopefully, you know, advocating for  
21 those to be known and for those to be hopefully  
22 addressed in a good way.

23 COMMISSIONER FELLNER: Do you know what the  
24 name of the agency was that went in?

25 MR. SERGIO MEDINA: It was -- Lutheran

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1 Immigration and Refugee Service was two of my  
2 agency -- a couple of -- I don't know who else  
3 attended.

4 MR. CHRISTOPHER NUGENT: The women's  
5 commission.

6 MR. SERGIO MEDINA: Yes, the women's  
7 commission for refugee immigrant children.

8 COMMISSIONER KANEB: Mr. Medina, you say  
9 you have, and I'm pleased to hear you have,  
10 apparently, easy access to these facilities.

11 MR. SERGIO MEDINA: Yes.

12 COMMISSIONER KANEB: And your people do  
13 too.

14 MR. SERGIO MEDINA: Yes.

15 COMMISSIONER KANEB: I'm pleased to hear  
16 that, and what I -- could I -- notwithstanding what  
17 you just said, I would infer -- but you tell me if  
18 I'm wrong -- that given the easy access that you and  
19 people that work with you have, don't you think if  
20 there were sexual abuse going on at any significant  
21 level, you'd hear about it?

22 MR. SERGIO MEDINA: I would say probably.  
23 I would say probably.

24 But, you know, the -- you know, going to  
25 the shelters and working with the caseworkers,

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1 working with the director of the program, meeting  
2 with the children, and trying to get this kid, you  
3 know, an attorney, access to a psychiatrist or some  
4 medical treatment, mostly all of that is going to  
5 revolve around, you know, what's happened to this  
6 child up and to the point that they get there.

7           And I think once they get there -- and  
8 especially in this region, in Southern California,  
9 the largest facility in this region is 24 beds. And  
10 it's a wonderful facility. You know, it's small  
11 scale. The kids get individualized attention, and  
12 it's not that large warehouse --

13           COMMISSIONER KANEB: Thank you.

14           Mr. Nugent, I got lost when you talked  
15 about how kids who really are minors wind up being  
16 classified as adults, to their detriment.

17           I did hear you say, well, they may have  
18 been advised by their agents to say they're 18 when  
19 they're 16. That's somewhat of a problem, I guess.  
20 It would -- if not defy solution, would make a  
21 remedy difficult.

22           So what else can ICE do to avoid  
23 classifying kids as adults when they are, in fact,  
24 children?

25           MR. CHRISTOPHER NUGENT: Well, that's one

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1 scenario that occurs, where a child lies. And  
2 sometimes the child is lying and saying that they're  
3 under 18 -- that they're over 18, and then go to the  
4 adult facility. There are other cases, actually,  
5 where children, particularly Chinese coming in, know  
6 that they'll get a better situation if they end up  
7 in ORR custody because they'll be releasable if  
8 they're picked up at a port of entry.

9 So you have some Chinese 20-plus-year-olds  
10 claiming to be children so they go to ORR.

11 COMMISSIONER KANEB: So the classification  
12 is the system is failing. But what's the solution?

13 MR. CHRISTOPHER NUGENT: Well, the major --  
14 the way this is happening, I think, for most  
15 instances is because of DHS's reliance on bone -- on  
16 forensic testing of children's teeth and children's  
17 wrists, which has a three-year margin of error.

18 And so you have children ending up being  
19 misclassified and sent to the adult facilities.

20 COMMISSIONER KANEB: But they don't have  
21 birth certificates. They may be lying. And there's  
22 a three-year margin of error.

23 Is there something we can -- what's the  
24 solution?

25 MS. REBEKAH TOSADO: Sir, if I may, and,

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1 Chris, you may be aware of this.

2 ICE has a policy in place on making age  
3 determinations. It does allow for the wrist X ray  
4 and teeth X rays, as well, but as one of a number of  
5 factors.

6 So there is a policy in place, but the  
7 wrist and teeth X ray is not the determinant factor.  
8 It may depend on a number of issues, including what  
9 the minor -- what the minor says his age is.

10 COMMISSIONER KANEB: Our primary interest  
11 here is avoiding having children put into an adult  
12 facility where they might be more likely to be  
13 sexually abused.

14 MR. CHRISTOPHER NUGENT: Okay. Well,  
15 Department of Homeland Security is the only  
16 government agency, to my knowledge, in the  
17 U.S. Government that relies on bone and forensic  
18 testing of children.

19 Congress has directed Department of  
20 Homeland Security to use holistic age determination  
21 methodologies recommended by medical and child  
22 welfare experts.

23 That would include psychological  
24 evaluations of the children to really sort of get a  
25 sense of it. Because the dental has been exposed in

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1 the "New York Times." And the dentist in New York  
2 who does this gets \$500 per kid, has a globe, and  
3 has a book of pictures of children and then bases  
4 that this child is a child or is an adult.

5 And it's been referred to by Public Health  
6 Service, when I met with them several years ago, as  
7 junk science. And they could not understand why DHS  
8 would be paying \$500 for these dental and bone  
9 exams.

10 And I realize it is only one factor. And  
11 there are a lot of other factors.

12 COMMISSIONER KANEB: I don't want to  
13 trivialize this or take too much more time.

14 I must say that my entrepreneurial  
15 instincts have been, let's say, aroused here. At  
16 \$500 a case, I'll bet I could, with some expert  
17 help, come up with some clinics that could do a  
18 better job. So I'll see you afterwards.

19 Thank you.

20 CHAIRMAN WALTON: Commissioner Aiken.

21 COMMISSIONER AIKEN: Just one question with  
22 two parts.

23 Your shop of director of review and  
24 compliance in the Office of Civil Rights and Civil  
25 Liberties, what is your formal relationship with the

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1 policymakers and interpreters in that agency, using  
2 an example of something that you have discovered in  
3 the agency that needs direct and appropriate  
4 attention, i.e., pertaining to sexual abuse of  
5 children, for example?

6           After understanding that formal  
7 relationship, what are some suggestions or  
8 observations that would improve that, if necessary,  
9 to make sure that it's a seamless, productive  
10 relationship?

11           MS. REBEKAH TOSADO: Well, our goal is to  
12 be integrated to the work of the department  
13 policymaking.

14           I myself am not involved in that anymore.  
15 I'm just focusing on complaints. And now at the  
16 outcome of complaints when we have recommendations  
17 that can have systemic impact, we will address this  
18 at a policy level.

19           But we do have policy advisors in the  
20 office that are responsible for engaging that  
21 proactive advice, looking at regulations, having  
22 discussions about different immigration proposals  
23 and that kind of thing.

24           When Mr. Hutchinson was the Undersecretary,  
25 he included us as part of his staff, though we



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1 report directly to the secretary and we're  
2 independent of his office.

3 So we had that relationship established,  
4 and we have a relationship with the director of  
5 policy, of immigration policy for the Department of  
6 Homeland Security.

7 And we have people on my staff in my office  
8 that participate in those meetings and exchange  
9 information and provide advice on issues that are  
10 ongoing.

11 COMMISSIONER AIKEN: So I'm still a little  
12 confused.

13 There is a burning issue in relationship to  
14 policy development and policy interpretation. And  
15 it's generated and discovered and detected from your  
16 particular office in relationship to, i.e.,  
17 complaints that are validated concerning sexual  
18 abuse.

19 MS. REBEKAH TOSADO: Uh-huh.

20 COMMISSIONER AIKEN: Where does that go  
21 into the chain of command and how are you connected  
22 to the responsible authority to interpret, develop,  
23 implement, monitor changes in policy?

24 MS. REBEKAH TOSADO: Good question.

25 As I said, the officer for civil rights

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1 reports directly to the secretary of Homeland  
2 Security. So that is -- there's a direct line,  
3 direct chain to the secretary to report on our  
4 findings or to report on our concerns about a piece  
5 of legislation or law enforcement operation.

6 There's not a mechanism that requires our  
7 office to sign off on any particular operation or  
8 legislation that's pending in order for the  
9 department to go ahead with it.

10 COMMISSIONER AIKEN: I certainly understand  
11 that, and I'm not going to belabor it anymore.

12 I'm just saying, you're telling me that  
13 there is a burning issue that you have discovered.  
14 And you have direct, untethered access to the  
15 director of Homeland Security for that individual to  
16 consider what you have found and policy  
17 recommendations, if necessary, to remedy the  
18 situation. And you have direct uninhibited access  
19 to that particular office.

20 Is that correct?

21 MS. REBEKAH TOSADO: Well, the officer for  
22 civil rights has direct access to that office.

23 COMMISSIONER AIKEN: I'm talking about not  
24 just you, but that office, whoever's over that  
25 office.

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1 MS. REBEKAH TOSADO: Yes. Yes.

2 COMMISSIONER AIKEN: Okay. Are there any  
3 recommendations or observations that anyone would  
4 have that would further improve, if necessary, that  
5 particular relationship?

6 MS. REBEKAH TOSADO: I can't think of any  
7 at this time.

8 I know that there's a lot of demands on the  
9 secretary and his time. But I know there's an  
10 effort to continue to integrate our office into all  
11 the operations of the department, whether it be an  
12 impact on civil rights and civil liberties.

13 COMMISSIONER AIKEN: I understand.

14 Are there any other observations,  
15 suggestions?

16 MR. CHRISTOPHER NUGENT: And I think  
17 Rebecca can address this, but I'm not sure how the  
18 Office of Civil Rights and Civil Liberties interacts  
19 with the directorate of policy, where policy is set  
20 and where there is actually a refugee coordinator  
21 that deals with asylum and refugee issues and how --  
22 what kind of relationship you have there.

23 And would a promotion to being in the  
24 policy directorate help the stature of the Office of  
25 Civil Rights and Civil Liberties in terms of

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1 integrating the policy work?

2 MS. REBEKAH TOSADO: I don't know. We are  
3 a direct report to the secretary, just like the  
4 director of policy is.

5 CHAIRMAN WALTON: Commissioner Fellner?

6 COMMISSIONER FELLNER: Yeah.

7 I wanted to follow up on two things there  
8 on the role of your office. One -- and following up  
9 on what Jim said. How do you monitor or how do you  
10 determine whether, in fact, the agency has responded  
11 appropriately to your findings?

12 For example, you have submitted now a final  
13 report which presumably has findings.

14 Do you follow up to see, what, in fact, has  
15 been done and do you keep working, and if so, how,  
16 to make sure that the agency takes what you think  
17 are the right steps in response?

18 That's one question.

19 And the second question is, how do you  
20 monitor what is, in fact, happening in the field?

21 Do you only -- does your office -- not just  
22 you, but do you only respond to complaints that come  
23 up either through those quarterly meetings that you  
24 described or whatever, or do you yourself, your own  
25 office go out and conduct some kind of interview or

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1 review process from your own particular perspective  
2 separate from the other mechanisms that were  
3 discussed earlier today?

4 MS. REBEKAH TOSADO: Well, I want to start  
5 by saying that I'm the director. I have two senior  
6 policy advisors and one investigator. That is the  
7 staff of the Office for Civil Rights and Civil  
8 Liberties.

9 Monitoring is very important.

10 COMMISSIONER FELLNER: That's the entire  
11 office?

12 MS. REBEKAH TOSADO: We have some contract  
13 staff as well. That's the entire review and  
14 compliance team within the office.

15 COMMISSIONER FELLNER: So wouldn't one of  
16 your recommendations in response to what Jim said be  
17 that you -- to really do the job that Congress and  
18 the American public anticipated in setting up this  
19 office is you would have to be a heck of a lot  
20 bigger?

21 MS. REBEKAH TOSADO: As I said before, I  
22 did say that we need more staff and more resources.

23 COMMISSIONER FELLNER: I don't think any of  
24 us realized how small --

25 MS. REBEKAH TOSADO: Yes, we're very small.

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1 COMMISSIONER FELLNER: -- tiny.

2 MR. SERGIO MEDINA: If I may add.

3 ORR has issued some guidance to all the  
4 shelters that they work with nationally. And the  
5 shelters are spread out all over the U.S.

6 Often a child, if they have been mistreated  
7 at the Border Patrol station or at any point before  
8 getting to ORR, ORR has asked the shelters to send  
9 that out -- to write it up and to send it in sort of  
10 a report format and that they would be working with  
11 your office and also with the Inspector General to  
12 follow up on those claims.

13 So, you know, once the child gets at the  
14 shelter, they realize that they're safe, they have  
15 some warm milk and cookies, or they feel that  
16 they're okay, maybe a week, two weeks later they'll  
17 say, oh, by the way, the Border Patrol agent I feel  
18 mistreated me in "x" way.

19 So I think that's one way that can help the  
20 kids be able to -- when they do feel safe, make it  
21 known that they feel that they have been mistreated.

22 As far as the result and the outcome of the  
23 investigation, I haven't heard of any final  
24 resolutions. But I think I'm encouraged that  
25 everyone is aware that it should be documented, well

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1 documented, the child's story, and sent in, at the  
2 very least.

3 MS. REBEKAH TOSADO: Thanks for clarifying  
4 that.

5 Also, I want to say that every complaint  
6 that comes to our office we refer immediately to the  
7 IG. That's part of a memorandum of understanding we  
8 have with the Inspector General. So any complaint  
9 that we have is referred first to the IG.

10 The IG can determine whether to open a  
11 complaint or refer it back to us for handling. At  
12 that point we can retain the complaint for  
13 investigation, which means our staff conducts the  
14 investigation and issues a final report, or we can  
15 refer it to the component and ask the component to  
16 do a review and report to us.

17 We ask the components to conclude its  
18 review within 180 days. And we ask follow-up  
19 questions.

20 And so I just wanted to say that to address  
21 the blow of having to say we have a very small staff  
22 and we can't do everything that we would like to do.

23 CHAIRMAN WALTON: Let me just ask.

24 Is it correct that this person who does the  
25 initial screening as to whether a special visa for

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1 children should be secured has no background in  
2 child welfare?

3 MS. REBEKAH TOSADO: That's not correct.  
4 He has extensive background in child welfare.

5 MR. CHRISTOPHER NUGENT: Advocates will  
6 contend that it's from a law enforcement perspective  
7 first and from a juvenile delinquency model as  
8 opposed to a child welfare model in dependency  
9 proceedings.

10 CHAIRMAN WALTON: What background does that  
11 person have, if you know?

12 MS. REBEKAH TOSADO: I actually don't -- I  
13 don't have his -- the details on his background, but  
14 I know that --

15 MR. SERGIO MEDINA: He's sort of the  
16 juvenile coordinator program nationwide. I see him  
17 as sort of the figure of sort of the lead juvenile  
18 coordinator. And they may have some experience  
19 working with children, but it doesn't necessarily  
20 mean that they have a child welfare background.

21 For example, I've seen a consent request  
22 denied for a child. The notes that he put said that  
23 the child had a conversation with his mother and  
24 they noted that -- on the case notes that the file  
25 was sent for him to review.



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1           Well, he used that as a basis to say that  
2 this child, if he had been abused by this mother,  
3 would never want to speak to this mother. And he  
4 denied the consent request.

5           So, I mean, there's a list. We're also  
6 compiling -- my agency's compiling a list of 50  
7 different incidences of absurd bases for denial for  
8 these consent requests, which makes us think that  
9 he's not that sensitive to these kids' issues, and  
10 it seems like he's missing something there.

11           MR. CHRISTOPHER NUGENT: As a footnote,  
12 there are no written criteria or regulations on this  
13 consent process or appeal process. And, also, there  
14 is published case law in the federal district courts  
15 on several mandamus actions reversing his decisions  
16 for being arbitrary and capricious and their  
17 reasoning and not accessing witness testimony.

18           CHAIRMAN WALTON: Okay. Anything else?

19           COMMISSIONER FELLNER: Can I go into a  
20 different -- I asked earlier about sexual abuse, and  
21 there seems to have been -- for various reasons  
22 you've also -- don't have a sense of to what extent  
23 it is or is not present in the unaccompanied minors.

24           What about physical violence beyond sexual  
25 abuse? Just to explore a little bit.

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1           Are you getting stories of children either  
2 having a lot of fights between themselves or staff  
3 using excessive force on the children? Or let's  
4 just broaden this up a bit to see -- I'm curious of  
5 what you are hearing in terms of the treatment of  
6 children in these facilities more broader.

7           MR. SERGIO MEDINA: I can only speak to the  
8 State of California. In the State of California if  
9 you operate a licensed basic shelter, staff are  
10 unauthorized -- they cannot touch children for any  
11 reason other than a pat on the back. There's no  
12 sort of -- and that's regulated that way.

13           I haven't come across any staff-to-child  
14 physical abuse incidences. And I also work in the  
15 Southern California region. So I don't work with  
16 every single shelter in the U.S.

17           Child on child, though -- you know, some of  
18 the kids that we provide care for have really,  
19 really difficult histories. Some have lived on the  
20 streets since the age of 5. Some have grown up in  
21 really violate households. And they'll come to the  
22 shelter and they'll act out and there's behavioral  
23 manifestations for that.

24           And I can safely say that the staff there  
25 at the shelters, you know, really do their best to

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1 intervene in a way that respects the child, that's  
2 not punitive in any way.

3 There's some sort of -- really sort of  
4 modern intervention techniques to work with kids who  
5 have behavioral issues other than punishment.

6 And I think that those are being well used.  
7 But I guess in short, I don't see what you asked.

8 COMMISSIONER FELLNER: Chris, what do you  
9 see -- or hear?

10 MR. CHRISTOPHER NUGENT: I've heard of  
11 incidents similar to what Sergio was alluding to,  
12 about children acting out, which could get construed  
13 as child-on-child abuse and sometimes sexually  
14 aggressive behavior by different teenage children in  
15 the facilities.

16 ORR's response, though, is not to -- INS's  
17 response would be to send this child to a super  
18 secure facility as a first resort.

19 ORR's response is let's work with the  
20 clinicians on staff to see if there are different  
21 sanctions that can be employed and that the child  
22 could still stay here and then think about a  
23 continuum of the different programs.

24 And ORR -- the other benefit of ORR's  
25 approach is that if a child does get sent to a

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1 medium secure facility and starts to rehabilitate,  
2 he can go back to a shelter care facility  
3 afterwards.

4 So they're constantly monitoring the  
5 custody of the children to figure out what the  
6 appropriate placement would be, as opposed to just  
7 leaving them in a secure facility forever, even  
8 though the child is actually demonstrating positive  
9 behavior.

10 The other issue I just wanted to flag,  
11 though, on privacy and confidentiality --

12 COMMISSIONER FELLNER: Wait. Would you --  
13 you were talking about child-on-child misconduct.  
14 What about staff-on-child misconduct, whether it  
15 be -- you're saying not in the small shelters, but  
16 you have knowledge of other facilities and larger  
17 ones.

18 Is that a problem or is the staff well  
19 trained and well disciplined and well -- you know,  
20 following professional rules of conduct?

21 MR. CHRISTOPHER NUGENT: They're being  
22 better trained than when the facilities were under  
23 INS. But a lot of the facilities are the same  
24 contractors that INS used.

25 But the clinicians, for example, when I was

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1 in El Paso, Texas, were feeling pretty -- under a  
2 lot of pressure by ORR in taking a much more  
3 comprehensive approach in terms of helping the child  
4 with their psychological and mental health needs  
5 than before.

6 And some of the teachers were also very  
7 impressed by ORR sort of encouraging vocational  
8 training and very different things that they would  
9 not do previously.

10 So there has been a lot of staff attrition  
11 at these facilities. So they're getting newer  
12 people who are getting acculturated from a child  
13 welfare approach. So I think that's positive.

14 I have not heard, though, of sexual --  
15 recently of any sexual abuse incidents involving  
16 adults and children.

17 In the '90s there was a lawsuit, and I  
18 think a criminal complaint out of a facility in  
19 Chicago involving shelter care staff and that was  
20 very hush-hush and people didn't discuss it  
21 afterwards.

22 But I think it goes to privacy and  
23 confidentiality issues because the other thing that  
24 we're contending with is that, you know, a lot of  
25 the children are instructed by their attorneys not

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1 to speak with the clinicians at the facilities  
2 because ORR doesn't have confidentiality of their  
3 information vis-a-vis the Department of Homeland  
4 Security.

5 So any of the clinician's notes can end up  
6 in the immigration proceedings and being used  
7 against them. And the same thing in terms of  
8 complaints and coming forward.

9 Some attorneys might be telling the  
10 children, you have a complaint. Better not bring it  
11 up here. Let's get you out of custody, and then  
12 we'll evaluate the potential of a lawsuit.

13 And that's been something that also comes  
14 up in adult cases all the time. Like, there's been  
15 a rash of detainees dying in immigration custody  
16 around the country over the last few years.

17 And somebody contacted me for advice and  
18 was, you know, talking about getting the OIG to  
19 investigate or getting civil rights to investigate.

20 And my advice was, well, if you're going to  
21 do a lawsuit, probably best that you get the lawsuit  
22 filed, and then OIG and civil rights could get  
23 involved as a strategy because, you know, the  
24 paperwork of OIG and civil rights is not necessarily  
25 going to help you in a wrongful death action.

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1           CHAIRMAN WALTON: Anything else?

2           Okay. Well, we, again, thank this panel.

3 You provided us with some valuable information.

4 There may be additional questions that we'd like to

5 pose to you. And if we do, we would ask that you

6 please respond to them.

7           This is our last panel on the immigration

8 detention issue. And I think we received a wealth

9 of information that will help us tremendously as we

10 proceed with our assessment of what we should be

11 recommending be done to address this particular

12 population.

13           So we thank you very much for your input.

14           Okay. We'll take ten minutes. Come back

15 in ten minutes to 4:00.

16           (Recess taken from 3:36 p.m. to

17 3:51 p.m.)

18           CHAIRMAN WALTON: Okay. We can get

19 started. We're a little early, which is good, on

20 our last panel. I know I'm a little tired, and I'm

21 sure everybody else is, but we are -- we welcome the

22 next panel, which will be speaking on the role of

23 staff in prisons and detention facilities and

24 eliminating prison rape.

25           Would our two witnesses please stand and