CHAIRMAN WALTON: Thank you very much.

Our next witness who will give us an overview of the immigration detention process in the federal system is Secretary Asa Hutchinson, who formerly served as the Undersecretary for Border and Transportation Security for the United States Department of Homeland Security from 2003 to 2005. And he is currently the founder and current CEO of the Hutchinson Group.

I first met the Secretary when he served as the United States Attorney for Arkansas when I worked in the White House, and we did some good work together, I think --

MR. ASA HUTCHINSON: Yes, we did.

CHAIRMAN WALTON: -- in trying to address the drug problem.

So it's good to see you again.

If you would please stand and take the oath.

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

MR. ASA HUTCHINSON: I do.

CHAIRMAN WALTON: Thank you.
MR. ASA HUTCHINSON: Thank you, Judge Walton, and thank you for your service on this Commission and all the other commissioners as well. I've enjoyed our discussions, and I appreciate your work. I'm delighted to be back in California to talk about immigration issues.

The last time I came here as Undersecretary, it was not the most friendly greeting. We had a town hall meeting on immigration, and they had signs outside that said, "Deport Asa."

So I'm glad there's a little bit more friendly venue here to come to today.

While I was coming out here for this testimony, a friend asked me what I was doing, and I explained to them what I was doing, testifying before the National Prison Rape Elimination Commission.

And the response was, well, I suppose that is important to some folks.

And I think you've probably heard a similar response. But I think it is very, very important, the work that you are doing.

I believe the way that we care and treat people who are in the care of the Government is one
of the ways that the values of society will be judged.

So I believe the work that you are doing is critically important, and I applaud you for it.

It is encouraging to see the mandate of Congress being carried out in such a thoughtful way. And as a former member of Congress, I'm pleased that you have engaged in these hearings and also that you've included in the -- your hearings the concern about immigration detention facilities. And that's the focus of my testimony today.

You've got some outstanding panelists that will follow, and my testimony will be giving a more broad overview as to the responsibility of detention officers within Homeland Security.

Before I get to that issue of immigration detention facilities, though, I wanted to comment on my home state of Arkansas and the impact the Prison Rape Elimination Act has had.

I'm pleased to report that the Arkansas Department of Corrections has received a federal grant for the installation of additional cameras and for training to help eliminate sexual assault in prison.

In addition, the Department of Corrections
has taken the initiative for increased training, education of inmates and family members and, very importantly, they have identified inmates with previous reporting violations of sexual assault and removed them from the general population.

In addition, they've used structural changes to prison facilities that have been made for inmate safety reasons.

This progress, in my judgment, can be attributed, in part, to the work of Congress and this Commission in taking on this issue.

And so I applaud those very concrete results.

I want to first, as I said, give a background on the myriad of agencies that have responsibilities in immigration enforcement.

After the attack on September 11, I was asked to help organize the newly created Department of Homeland Security. It was the combination of over 20 different federal agencies, 180,000 employees into a newly organized Department of Homeland Security.

As part of this reorganization, the former INS, that everyone historically has been familiar with, was very clearly abolished. And we were to
take the parts of INS, transfer to the new department, and to reorganize those immigration and enforcement responsibilities.

We did that. I believe the reorganization results have been improvement; not perfect result, but improvement in effectiveness.

One of the challenges that we faced as a new department was that the main focus was terrorist attack. And so what was going to happen to our traditional mission of immigration enforcement and carrying out the responsibility for caring for the illegal aliens that are apprehended?

Every year the department arrests over 1.6 million aliens. And the responsibility for alien apprehension is shared between a number of different agencies within Homeland Security: One is the Border Patrol that obviously makes the apprehension between the ports of entry.

And then you have the Customs and border protection inspectors or officers at the ports of entry that may detect document fraud, may detect an illegal attempt at entry and make an apprehension.

And then you have your ICE agents in the interior of the country that are also making apprehensions on both a targeted basis and in
responding to law enforcement concerns.

And so you have a number of different agencies all within Homeland Security that are making apprehensions.

In terms of resource, the Border Patrol has over 11,000 agents, and the President has committed to add another 6,000 Border Patrol agents over the next few years.

The Border Patrol protects the borders between the ports of entry in which there are 325 ports of entry. They work out of 142 Border Patrol stations across the country.

And then you have within Immigration and Customs Enforcement, ICE, the Office of Detention and Removal Operation. That includes 6,700 authorized employees.

I will call them DRO. They use its resources to locate and arrest fugitive aliens and detain aliens while they're pending removal proceedings.

And as I mentioned, ICE agents, in addition, do enforcement actions. In fact, if you pick up "USA Today," you will see where there was an ICE raid of multiple facilities across the country in which aliens were apprehended in processing
plants. And this occurred in my state of Arkansas. And you see the typical circumstance that they have been working in the plant many times for five years. They have documents, even though they might have been forged. And they are being separated from their family, and they might be lying about the fact that they -- they say they do not have family when they, in fact, have children, because they don't want their children apprehended and deported from the country. So it's a very difficult circumstance in which the enforcement agents are making these apprehensions. Once they are apprehended, then a multitude of things can happen depending upon the circumstances. Under our law, some aliens, including those with criminal histories or those placed in expedited removal, are classified as mandatory detainees and are detained upon apprehension. The other segment of the alien population are nonmandatory detainees, and they may or may not be detained pending their removal proceedings to
their home country.

Prior to removal, an alien may present claims for relief, including petitions for asylum with an immigration judge and various levels of judicial review that may result in their continued presence in this country, either detained or nondetained.

And a number of possibilities exist as to what can happen.

Generally, apprehended Mexican nationals are quickly processed and returned across the border. But if they're an alien from another country, say El Salvador, they are processed but detained for undetermined period of time awaiting transportation, which may take cooperation with the Embassy, flights being arranged, and they are detained during that time.

And now with the Administration's concentration on ending catch and release, they're spending more and more time in detention facilities awaiting the transportation back to their country.

The result of these various scenarios is that in recent years there have been more than 23,000 detainees in detention at a given time.

And over the last few years, detention
removal has processed over 200,000 aliens annually through its detention system. Of the aliens detained, it's estimated that 10 to 13 percent are asylum seekers.

And if you can look at immigration cases, they're different from what you have been hearing in your testimony in previous hearings because these are not normal criminal cases. Immigrant aliens may be in family units. And all of them are being held on civil administrative violations in contrast to criminal violations.

The majority of the aliens detained do not have criminal histories. Immigration officials must deal with language barriers, family units, special dietary issues, unaccompanied children, and the need to segregate violent criminal populations from noncriminal aliens. In some instances, the criminal history, particularly the offenses committed overseas, is not known.

The criminal history may range from drug dealing to crimes against children and crimes of violence. This very background presents unique challenges to detention officials in making sure
that abuse does not occur and that family units are kept intact.

And let me give you an illustration as to some of the technology that has been put in place that helps us.

Under the US-VISIT Program, for the first time we're using biometric technology to try to determine criminal histories and whether they're on any terrorist watch list.

But a good illustration as to how this worked, an immigrant came into our country in 1996 in a legal fashion with a visa, came from Nigeria. They came to this country, this individual, committed a crime, and overstayd their visa. Well, they decided to flee our system of justice and went back to their home country.

Seven years later they wanted to reenter the United States. Well, they got false documentation and a false passport and a false identity and reentered through the Atlanta International Airport.

The difference was that we had our US-VISIT Program, and as the inspector checked their passport, nothing came up because it was a false identity.
And then the question was asked, ma'am, would you mind giving us your fingerprints? They scanned the two index fingers, and within 8 seconds a hit came up on the inspector's screen that identified that alien with the crime that was committed. And obviously that individual was processed in a different way. And now that same processing capability is available at our borders. And now the Border Patrol as they apprehend an alien, each one of them will be fingerprinted and the fingerprints will be run through our criminal databases. And so it's easier to detect a criminal alien from someone who is simply coming into our country for economic reasons.

The accuracy of information in the databases are essential. And the continued integration of our databases between immigration officials and the FBI is essential to know the criminal history as these individuals are processed. A great deal has been accomplished through the use of technology.

Let me make some observations and some hopeful recommendations for your consideration.
It is important for me as Undersecretary to visit facilities. And as I did, I believe that Homeland Security officials were dedicated to providing proper care.

It was also my observation that continued oversight is essential to eliminating abuse and violence in the care of immigrant aliens.

And I would suggest that the following be considered by this Commission:

First of all, greater transparency in complaints of abuse, investigation, and outcomes is essential. Even though there is a complaint procedure for detainee abuse, there's an inadequate tracking of the complaints and their disposition.

I tried to find out, through my contacts at Homeland Security, what are the instances of sexual abuse in detainee facilities.

Well, no one could give me a handle on those statistics. Clearly there's not a sufficient tracking mechanism and reporting mechanism. And so if I can't find it, an NGO cannot find it, and you cannot have the level of review and protection that is needed.

In addition, I believe that those -- tracking system is important to be reviewed by the
Inspector General, by the Office of Civil Rights within the Department of Homeland Security, and to outside groups as well to the extent permissible with privacy protections.

In addition, I'll just mention as a sidelight, the U.S. Congress passed in 2000 the Death in Custody Act. They simply required any facility that receives federal funds -- so it could be a state facility -- that they have to report any deaths in prison and the circumstances of it.

I believe that relates to sexual abuse because that could be the background for the circumstances of death.

Well, that Death in Custody Act is up for reauthorization. And I hope that this Commission will recommend the reauthorization of the Death in Custody Act so that we can have that type of reporting requirements for state facilities as well as federal facilities.

The second thing that I would mention is that we need to have a continued emphasis on the construction and contracting of detention facilities that can accommodate family units.

That has historically been a problem. The Department of Homeland Security wants to move that
direction, but it needs to be a focal and a requirement that they have facilities that can house family units together so they're not separated. And I believe that that will be a safer environment.

Number three. I believe we should recommend more resources for the Office of Civil Rights. And we'll have someone later testifying to you about that office.

But that is a quasi independent office within Homeland Security that's designed to monitor compliance with detention standards and policies and review complaints of abuse. They need to have the resources to do that, to provide the training, education as a check and balance.

And I believe this is a preferable unit to the Inspector General's office. The Inspector General had more of a "gotcha" relationship within the department. And I think we need to have emphasis upon detection, training, as well as a response to complaints.

Number four, this Commission, I hope, will review the adequacy of the policies within detention and removal for the safety of detainees.

There are safety and standards that are set into place. You should consider putting that into
regulatory form and giving more weight to those standards and a greater capability in tracking.

Number 5, I hope that you'll consider increasing the -- recommending increased funding for personnel of detention and removal so they can provide greater oversight, including training and enforcement of detention standards at contract facilities.

As I mention, the greatest problem is just not knowing what is out there. And I think more emphasis upon a tracking system will give this type of oversight that is necessary for safety and security.

Thank you for your work. And I'm delighted to appear before you today.

CHAIRMAN WALTON: Well, Mr. Secretary, thank you for your testimony. I just have one question.

Is there any type of international tracking system that exists whereby individuals who have criminal histories in other countries or in the United States or who are wanted for criminal activity is available for dissemination internationally?

MR. ASA HUTCHINSON: There is only a