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
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 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.