particular issues surrounding the custody of minors of all ages in immigration detention, what children experience at the border and as they move through the system, and the efforts that the Office of Refugee Resettlement has made to ensure their safety and well-being.

Mr. Medina is the field coordinator for the Southern California Office of Refugee Resettlement unaccompanied minors program through the Lutheran Immigration and Refugee Service, whose work involves ensuring that children in such facilities or shelters receive all necessary services.

Mr. Nugent is senior counsel for the Community Services Team of Holland and Knight, a law firm in Washington, D.C.

He has over 15 years of experience in immigration law and policy, including his previous tenure as a director of the American Bar Association Commission on immigration policy, practices and pro bono services.

And Ms. Tosado, who you had introduced to you earlier and spoke on our last panel, is from the Department of Homeland Security's Office of Civil Rights and Civil Liberties.

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
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