

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING EDITED

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THE STATE OF CIVIL RIGHTS AT
IMMIGRATION DETENTION FACILITIES

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FRIDAY, JANUARY 30, 2015

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The Commission convened in Suite 1150
at 1331 Pennsylvania Avenue, NW, Washington, DC, at
9:02 A.M., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman
PATRICIA TIMMONS-GOODSON, Vice Chair
ROBERTA ACHTENBERG, Commissioner
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner*
DAVID KLADNEY, Commissioner
KAREN NARASAKI, Commissioner
MICHAEL YAKI, Commissioner

MARLENE SALLO, Staff Director
JENNIFER HEPLER, Parliamentarian

* *Present via telephone*

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STAFF PRESENT:

TERESA BROOKS
MARGARET BUTLER, EEO Director
PAMELA DUNSTON, Chief, ASCD
DARREN FERNANDEZ
DORIS GILLIAM
ALFREDA GREENE
ROBERT LOCKLEAR, OGC Intern
LENORE OSTROWSKY, Acting Chief, PAU
ROREY SMITH, General Counsel
MELISSA TUCKER
MICHELE YORKMAN, Director, IT

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DEULL
JASON LAGRIA
CLARISSA MULDER
AMY ROYCE
JUANA SILVERIO
ALISON SOMIN
KIMBERLY TOLHURST

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P R O C E E D I N G S

(9:35 a.m.)

I. INTRODUCTORY REMARKS

CHAIRMAN CASTRO: I'm going to call the meeting to order. Good morning, everyone, welcome. I'm Chairman Marty Castro of the U.S. Commission on Civil Rights. I really would like to welcome everyone who is here with us today, those who are testifying, members of the audience, as well as those who are joining us via audio link, as well as for the first time ever live-streaming by the Commission of a hearing or briefing on one of our civil rights topics. So, this is an effort by us to really make our work even more transparent and open to the public. And we hope to continue to grow how we use technology to allow Americans across the nation or anywhere else they might be in the world to access us using our technology skills and capabilities.

Today, we're going to be conducting a briefing on the State of Civil Rights at Immigration Detention Centers, as well as the condition of the border children who arrived this summer at our borders.

Today, I'm being joined by our new Vice

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1 Chair, Patricia Timmons-Goodson, as well as
2 Commissioners Narasaki, Heriot, Achtenberg,
3 Kladney, and Yaki. Commissioner Kirsanow joins us
4 by phone.

5 And the purpose of the briefing, as I
6 indicated, is going to be to examine the equal
7 protection concerns that we have raised with the
8 Department of Homeland Security [DHS] and
9 Immigration Customs and Enforcement [ICE] over the
10 treatment of adult and minor detainees in
11 representative detention centers across the country
12 who are being held under federal law.

13 Experts you'll see at the course of
14 this briefing are going to talk to us about both
15 the issues that they face from the government
16 perspective, as well as from the NGO
17 [nongovernmental organization] perspective, and
18 other activists and individuals who have
19 information to share with us on this important
20 topic.

21 From a personal perspective, I want to
22 once again reiterate a thanks to all of my
23 colleagues for approving this hearing. This is an
24 issue that's been important not only to me, but to
25 the Commission. The Commission has looked at the

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1 issue of immigration for many years, starting in
2 1980 with our seminal report on the *Tarnished*
3 *Golden Door*. Again in 2003, we looked at the civil
4 rights of migrant communities. In addition, our
5 State Advisory Committees have also looked at this
6 topic.

7 We have been committed to insuring that
8 all individuals in this country, including
9 immigrants, documented and undocumented, have their
10 rights enforced and due process concerns addressed.

11 Under my Chairmanship, I'm very proud
12 and pleased to say that this is not the first time
13 we have addressed the issue of civil rights in
14 immigration.

15 We went down to Alabama for the first
16 time, a field hearing in many years, to bring
17 forward those individuals who were in favor of, as
18 well as opposed to, the state enforcement laws that
19 were SB-1070 types from Alabama, from South
20 Carolina, Georgia, Utah, and we were able to talk
21 not only to the advocates, but also to those
22 individuals who are proposing these laws and dig
23 deep down and find the issues, and the implications
24 that these laws had on discrimination, on hate
25 crimes, on bullying, and on lack of access to

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1 educational opportunities for immigrants. That
2 report will be coming out this fiscal year.

3 We also wrote to the President and the
4 Director of Homeland Security on the occasion of
5 the border children, the refugee children coming
6 this summer, expressing our concerns not only about
7 the due process that should be afforded to these
8 children, but also based on allegations and
9 reports, and complaints such as this by the Midwest
10 Immigrant Justice Center, National Immigrant
11 Justice Center, and the ACLU [American Civil
12 Liberties Union], and others detailing allegations
13 of sexual and physical abuse of these children.

14 In addition, when President Obama
15 announced his deferred action, the expansion
16 deferred action, and his Executive Action, the
17 majority of this Commission commended him for that
18 action. That will certainly affect the civil rights
19 not only of immigrant families, but mixed families
20 of immigrant and U.S. citizens.

21 And, finally, our State Advisory
22 Committees remain very active on this issue. Our
23 Illinois State Advisory Committee just issued a
24 report in December on the Implications of
25 Comprehensive Immigration Reform to immigrant

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1 communities in Illinois. So, this hearing today is
2 extremely important to us in the history of our
3 commitment to examining issues of civil rights and
4 immigration.

5 As the son and grandson of Mexican
6 immigrants, this is a particularly important topic
7 to me. While the individuals who are in custody and
8 in detention are as diverse as the parts of the
9 world from which they come, it is clear that many
10 of them, a majority of them are Latinos. And as the
11 first Latino Chair of the U.S. Commission on Civil
12 Rights, I feel a personal commitment to look at
13 this issue, but it is broader than that.

14 As a nation built upon immigrants, I
15 think every one of us is just a few generations
16 away from a family member who came from somewhere
17 else. We have a commitment to freedom and to
18 liberty, so we have to insure that when individuals
19 are in our care and custody, that to the best of
20 our ability, as a nation we insure that their civil
21 rights, and human rights— human dignity—are
22 enforced. And we cannot allow that to be
23 outsourced.

24 We do know that there are opportunities
25 when our prison system is being contracted out to

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1 private entities- that does not allow our
2 government or our people to outsource and contract
3 out our commitment to civil rights. And today,
4 we're going to look closely at that issue as well.

5 Ultimately, this is an issue that
6 affects all Americans, and so as we proceed today I
7 want to thank those of you who are participating
8 today. We want to have a robust and thorough
9 discussion of the issue, and we also want to be
10 mindful of the opportunities where we can explore
11 innovation.

12 We want to be able to ultimately
13 present to the President and Congress, as is our
14 right and duty and obligation, a report on what we
15 gather here today to recommend to the President and
16 Congress how we can better-how we can improve the
17 opportunities to care for those individuals who are
18 in our care and custody.

19 We do not want to see more people being
20 held in solitary confinement. We want to-don't want
21 to see the further reports of abuse and trauma that
22 some of the children are alleged to have occurred-
23 that have occurred to them, so today we also want
24 to find out from you what is being done to address
25 those in the future, so that a year from now the

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1 system that we have in place is better and stronger
2 and fairer as a result of the work of this
3 Commission in collaboration with each and every one
4 of your agencies and organizations.

5 With that said, I'm going to allow one
6 of our Commissioners to make a disclaimer of her
7 participation here, and then I'll go through the
8 housekeeping of how the actual briefing will occur.
9 So, Commissioner Narasaki. . . .

10 COMMISSIONER NARASAKI: Thank you, Mr.
11 Chairman. I appreciate this. I applaud Chairman
12 Castro for suggesting this briefing on the State of
13 Civil Rights at Immigration Detention Facilities.

14 This is an extremely important and
15 timely topic, particularly in light of the plans of
16 some in Congress to continue to mandate a detention
17 bed quota, and the Administration's expansion of
18 detention of families with children.

19 Last year's temporary but dramatic flow
20 of unaccompanied minors from Central America
21 fleeing harm and seeking asylum in the U.S.
22 spotlights the need for the government agencies to
23 be extremely thoughtful about who is detained and
24 how we can better employ alternatives to detention,
25 particularly when women, children, and families are

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1 involved.

2 It has also added even greater urgency
3 to the need for government to do everything it can
4 to oversee detention facilities so that the
5 conditions of detention are consistent with
6 international human rights standards, federal and
7 state laws, and our highest values of compassion as
8 Americans.

9 I would like to thank everyone who will
10 be testifying today, as well as those who are
11 planning to submit written testimony through the
12 Commission's website.

13 I would also like to thank the
14 Commission's hardworking staff for their excellent
15 preparation of today's hearing. Even though I can't
16 ask questions, I did read everything.

17 Unfortunately, because of federal
18 rules, I have to recuse myself from today's hearing
19 because of my relatively recent work on behalf of
20 civil rights, human rights, and immigrant rights
21 groups working to limit immigration detention prior
22 to becoming a Commissioner last July when I was
23 appointed by President Obama. So, while I will not
24 be able to ask questions, I do look forward to
25 hearing everyone's testimony about such a grave

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1 issue facing our nation. Thank you, Mr. Chairman.

2 CHAIRMAN CASTRO: Thank you,
3 Commissioner.

4 Today's briefing is going to feature 14
5 distinguished speakers who are going to provide us
6 with their points of view on this topic. We have
7 asked each speaker to allow us to break them up
8 into four different panels. Panel I is going to
9 consist of government agencies, and guidelines and
10 standards will be reviewed there in terms of the
11 care that is being provided to the detainees. Panel
12 II is going to consist of Private Detention
13 Facilities and invoke the questions of standards of
14 care there. Panel III is going to touch on legal
15 challenges associated with immigration detention
16 facilities, and Panel IV will conclude with the
17 civil rights associated with immigration detention
18 centers.

19 During the briefing, each panelist is
20 going to have seven minutes to speak. After the
21 panelists make their presentations, Commissioners
22 are going to have an opportunity to ask questions.
23 In order to maximize the amount of time, we ask
24 everyone to be as brief as possible, including my
25 fellow Commissioners.

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1 You're going to notice, speakers, that
2 there's a system of warning lights here. When the
3 light turns from green to yellow that means you
4 start, two minutes remaining you're going to see a
5 yellow light, and unlike when we're driving,
6 instead of running the yellow light, you will speed
7 up though, because the red light will start soon,
8 and when the red light hits, you have to stop.
9 Again, we're just trying to provide as much time as
10 possible for interaction, so I know you'll help me
11 abide by that.

12 Again, I ask my Commissioners—once when
13 the opportunity comes, let us try to be as concise
14 as possible.

15 Finally, the record of this hearing is
16 going to remain open for 30 days. If panelists or
17 members of the public would like to submit
18 materials, they can either mail them to the U.S.
19 Commission on Civil Rights, the Office of Civil
20 Rights Evaluation at 131—I'm sorry, 1331
21 Pennsylvania Avenue, NW, that's 1331 Pennsylvania
22 Avenue, NW, Suite 1150, Washington, DC, 20425, or
23 via email at publiccomments@usccr.gov.

24 With those bits of housekeeping out of
25 the way, let me introduce our first panel. Our

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1 first panelist this morning is Ms. Megan Mack,
2 Director of the Office of Civil Rights and
3 Liberties [OCRL] at the Department of Homeland
4 Security. Our second panelist is Mr. Franklin C.
5 Jones, who is the Executive Director for the
6 Privacy and Diversity Office [PDO] at Customs and
7 Border Protection [CBP]. Our third panelist is Ms.
8 AnneMarie Bena, Principal Advisor and Director in
9 the Office of Refugee Resettlement [ORR] at the
10 U.S. Department of Health and Human Services [HHS].
11 And, finally, our fourth panelist is Mr. Kevin
12 Landy, Assistant Director for Detention Policy and
13 Planning at Immigration Customs Enforcement [ICE]
14 at the U.S. Department of Homeland Security. Ms.
15 Mack.

16 Actually, before I do that, let me
17 swear and affirm you all. So, will you raise your
18 right hands, please? I will now ask that you swear
19 and affirm that the information you are about to
20 provide to us is true and accurate to the best of
21 your knowledge and belief. Is that correct?

22 (PANEL SWORN)

23 CHAIRMAN CASTRO: Okay, thank you. Now
24 proceed, Ms. Mack.

25 **II. PANEL I - GOVERNMENT PANEL**

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1 MS. MACK: Good morning.

2 CHAIRMAN CASTRO: Good morning.

3 MS. MACK: Thank you, Chairman Castro
4 and to the Commission for hosting and convening
5 this important briefing today.

6 I'm Megan Mack, Officer for Civil
7 Rights and Civil Liberties [CRCL]at the Department
8 of Homeland Security. My office is truly unique. It
9 was created by the Homeland Security Act to insure
10 that the civil rights and civil liberties of
11 persons are not diminished by the Department's
12 efforts, activities, and programs aimed at securing
13 the homeland.

14 Every day, my staff and I work to
15 fulfill that notion, both by providing policy
16 advice on civil rights and civil liberties issues
17 to Department leadership, and by investigating
18 complaints and other allegations received from the
19 public about those issues.

20 We work collaboratively with U.S.
21 Customs and Border Protection, and U.S. Immigration
22 and Customs Enforcement to insure civil and human
23 rights and civil liberties are incorporated into
24 immigration-related programs, policies, and
25 operations throughout the Department.

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1 Complaints related to immigration
2 apprehension and detention are the largest share of
3 complaints we investigate.

4 At CRCL, as my office is called, our
5 efforts on immigration detention have been of great
6 importance to me personally. I came to the
7 Department from the American Bar Association [ABA]
8 where I led the Commission on Immigration there,
9 and worked on detention issues, including access to
10 counsel and other detention conditions and issues.

11 I understand today's briefing is to
12 help you consider equal protection in the
13 administration of justice in our immigration
14 detention facilities. My colleagues and I will
15 address detention standards and the Prison Rape
16 Elimination Act [PREA], which you identified as
17 subjects of interest.

18 In addition, since the subject of equal
19 protection in DHS programs and activities,
20 including immigration detention, lies at the heart
21 of my office's role, I wanted to spend a moment on
22 two other topics to which we devote substantial
23 resources; language access and appropriate
24 treatment for persons with serious medical or
25 mental health issues or disabilities.

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1 On language access, the Department
2 recognizes its responsibility to communicate with
3 detainees in a language they can understand. This
4 requires affirmative steps to insure effective
5 communication, having interpreters and telephone
6 services readily available, having appropriate
7 staff trained to use them, and having the right
8 policies and procedures in place for language
9 access. This means avoiding relying on bilingual
10 staff who are not qualified to provide
11 interpretation, and insuring that fellow detainees
12 aren't relied on for interpretation.

13 In the context of sexual assault
14 prevention and response where the stakes are
15 especially high, the requirements of the
16 Department's [DHS's] rule under the Prison Rape
17 Elimination Act for language access are very
18 specific. I note we face a particular challenge in
19 providing appropriate language access for detainees
20 who speak languages spoken only in relatively small
21 communities, where commercial interpretation
22 services are substantially more difficult to
23 engage, and to detainees who aren't literate in any
24 language and so can't be served by translation of
25 written materials.

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1 The Department [DHS] has taken many
2 important steps to acknowledge the special
3 vulnerabilities of individuals with serious medical
4 and mental health conditions who are in our civil
5 rights—our civil immigration detention system. And
6 the obligation to provide appropriate and
7 reasonable accommodations to detainees with
8 disabilities to insure they can participate fully
9 in the programs and services offered across the
10 Department, including in detention.

11 So, for example, in 2013, ICE issued a
12 directive on segregated housing that insures
13 regular review of all long-term placements in a
14 segregated housing unit—and the substantial
15 additional requirements for initial and regular
16 review of detainees in segregated housing who have
17 a serious medical or mental health condition or
18 disability.

19 [I'm] skipping a little bit because
20 Kevin Landy is quite an expert on this topic. I
21 turn briefly to the Prison Rape Elimination Act,
22 and ICE's detention standards. DHS finalized
23 Department-wide regulations under PREA in March
24 2014 to prevent, detect, and respond to sexual
25 abuse and assault in DHS confinement facilities.

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1 While the DHS components had policies
2 in place before PREA to prevent sexual abuse, the
3 DHS PREA regulations created uniform, effective
4 safeguards against sexual abuse in ICE and CBP
5 custody. My colleagues from ICE and CBP will
6 discuss the implementation of the regulations
7 within their components in more detail.

8 From my office's perspective, we
9 operate a Department-wide working group to
10 facilitate consistency in implementation where
11 that's appropriate, and we assist the components on
12 various PREA issues, where we can.

13 CRCL was also involved in the
14 development of ICE's 2008 and 2011 Performance-
15 Based National Detention Standards, or PBNDS, and
16 Family Residential Standards which accomplished
17 most of the safeguards enumerated under PREA. ICE
18 is also revising its standards to incorporate
19 additional PREA requirements, and my office is
20 providing technical and other assistance.

21 I emphasize that we understand and take
22 seriously our responsibility to insure not only
23 that the right policies are in place, and PREA and
24 the detention standards are substantial and real
25 improvements over their predecessors, but also that

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1 we follow the policies and practice, and that we
2 have the right mechanisms in place to consider
3 policy change, when needed.

4 The components have their own policy
5 making monitoring and inspection offices and
6 programs, and CRCL provides another form of
7 monitoring and oversight, as well as
8 recommendations on policy, practice, and training.

9 While our work reaches across the
10 Department [DHS], a very substantial share of the
11 complaints we receive and recommendations we make
12 involve ICE and CBP detention.

13 On the subject of unaccompanied
14 children, as the Commission is aware, the United
15 States experienced a humanitarian crisis along the
16 southwestern border last spring and summer,
17 particularly in the Texas Rio Grande Valley, as
18 tens of thousands of unaccompanied children and
19 adults traveling with children crossed the border.

20 In the immediate crisis, DHS focused on
21 getting those adults and children, many of whom who
22 had undertaken a dangerous journey, into a safe and
23 secure environment where they could be processed.
24 [I'm] skipping more for HHS to cover.

25 While some children remained in DHS

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1 custody for more than three days, we undertook a
2 significant government-wide response to address the
3 crisis, which included the establishment of a
4 unified coordination group that brought the assets
5 of multiple federal agencies to bear on the
6 situation.

7 Unaccompanied children are inherently
8 vulnerable, so we place a high priority on
9 identifying any protection concerns. Unaccompanied
10 children from contiguous countries who don't
11 present protection concerns—excuse me.

12 Under the Trafficking Victims
13 Protection Reauthorization Act of 2008 [TVPRA],
14 when DHS encounters an unaccompanied child from a
15 contiguous country, such as Mexico, the child is
16 screened to identify potential victims of human
17 trafficking, and determine whether the child has a
18 fear of persecution if returned to his or her home
19 country. DHS as a matter of policy conducts the
20 screening on all unaccompanied children regardless
21 of country of origin.

22 CHAIRMAN CASTRO: Ms. Mack, we'll ask
23 you to wrap up, and we'll come back and ask you
24 some questions on those topics, I promise.

25 MS. MACK: Thank you, again.

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1 CHAIRMAN CASTRO: Mr. Jones?

2 MR. JONES: Chairman Castro, thank you,
3 and distinguished members of the U.S. Commission on
4 Civil Rights. Thank you for allowing me to be here
5 today.

6 I appreciate the opportunity to speak
7 with you about the actions taken by U.S. Customs
8 and Border Protection to implement the standards to
9 prevent, detect, and respond to sexual abuse and
10 assault in confinement facilities. We refer to them
11 as the DHS PREA standards; and to highlight our
12 efforts in this area.

13 CPB is committed to insuring the safety
14 of all individuals in our custody. Detention
15 standards have always been important to CBP, and we
16 are committed to preventing, detecting, and
17 responding to sexual abuse in all of our holding
18 facilities. CBP has fully embraced the DHS PREA
19 standards, which build on our prior policies.

The PREA standards which became
effective on May 6, 2014, ensure that appropriate
mechanisms are in place to prevent, detect, and
respond to sexual abuse in DHS confinement
facilities. On May 6, current [CBP] Commissioner
[R. Gil] Kerlikowske issued a Zero Tolerance of

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Sexual Abuse policy to the CBP workforce, which prohibits all forms of sexual abuse of individuals in CBP's custody, including in holding facilities, during transportation, and during processing.

Immediately upon implementation of the policy, CBP appointed an interim Prevention of Sexual Assault Coordinator to begin coordinating our efforts across the agency. CBP created a new position, and we have selected a permanent coordinator who should be joining our organization within the next few days.

CBP's efforts to implement have been moving swiftly, and we have enjoyed great support from all of the operational components across CBP. CBP's Office of Border Patrol [OBP], Field Operations, Air and Marine, and Internal Affairs have all issued guidance to their staff on the DHS PREA standards, and the zero tolerance policy.

Notification to field personnel is key to the success of implementing the PREA standards and to enforce the DHS standards, so CBP is developing training for all of the persons that have contact with detainees in CBP holding facilities and who interact during the processing of adults and minors. The training will underscore

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employee obligations for preventing, detecting, and responding to sexual abuse, as well as providing techniques and methods for communicating with individuals who are victims of sexual abuse.

1 Detainees or third parties can report
2 incidents or allegations of mistreatment without
3 fear of retaliation, as stated in our policy. In
4 addition, in an effort to insure that detainees are
5 able to report sexual abuse allegations to third
6 parties, posters were developed and shipped to all
7 CBP holding facilities across the country,
8 displaying the telephone number of the DHS Office
9 of the Inspector General. All sexual abuse
10 allegations must be reported to the Commissioner's
11 Situation Room and the Joint Intake, which is a DHS
12 facility for taking in misconduct allegations
13 that's managed by ICE and CBP.

14 CBP employees who violate the
15 prohibitions against sexual abuse will be subjected
16 to disciplinary action or corrective action upon
17 proof of violation up to removal from federal
18 service.

19 I want to thank you for providing me
20 with the opportunity to outline the actions being
21 taken by CBP to implement the PREA, and I welcome

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1 your questions and comments, and look forward to
2 continuing this dialogue on this—what we consider
3 to be most pressing issue.

4 CHAIRMAN CASTRO: Thank you, Mr. Jones.
5 Ms. Bena?

6 MS. BENA: I'd like to thank the
7 Commission for inviting the Office of Refugee
8 Resettlement [ORR] to discuss its responsibilities
9 for providing care and services for unaccompanied
10 children.

11 CHAIRMAN CASTRO: Speak a little closer
12 into your mic, please.

13 MS. BENA: Today, I'd like to share
14 general information on the children that come into
15 ORR care and custody, as well as the standards of
16 care and services. And I'll also briefly discuss
17 ORR's recently published Interim Final Rule on
18 Preventing, Detecting, and Responding to Sexual
19 Abuse and Harassment.

20 Unaccompanied children or children who
21 enter the United States unaccompanied by a parent
22 or legal guardian and without immigration status
23 come into ORR's care when they are referred to us
24 by another federal agency, usually the Department
25 of Homeland Security.

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1 Once DHS has identified a minor as an
2 unaccompanied child, they transfer the child to ORR
3 custody by transporting the child to one of ORR's
4 care provider facilities. ORR currently has
5 approximately 124 care provider facilities in 15
6 states.

7 In Fiscal Year 2014, ORR placed 57,496
8 children in its care provider facilities, and the
9 vast majority of the children came from Honduras,
10 Guatemala, and El Salvador. Children from Mexico
11 accounted for less than 2 percent of the total, and
12 all other countries combined totaled less than 3
13 percent of all referrals from federal agencies.

14 The demographic breakdown has changed
15 slightly from previous years, with an increase in
16 the number of female unaccompanied children and the
17 number of children under 14 years of age. In
18 previous years, approximately 25 percent of the
19 population was female, while in Fiscal Year 2014
20 females made up approximately one-third of the
21 population. Also in Fiscal Year 2014, approximately
22 27 percent of the population was under 14, while in
23 previous years the percentage had ranged from 17-24
24 percent.

25 ORR has a network of care provider

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1 facilities across the U.S. that provide various
2 levels of care, including shelters, group homes,
3 therapeutic providers, residential treatment
4 centers, staff secure providers which are kind of a
5 medium security facility, transitional foster care,
6 and long-term foster care. A very small number of
7 children are placed in secure facilities if they
8 have committed dangerous crimes or pose a danger to
9 themselves or others.

10 The vast majority of children, however,
11 are housed in our shelter facilities. All permanent
12 ORR care providers are state-licensed facilities
13 that are licensed to provide residential services
14 to minors. This means that all ORR care provider
15 facilities are overseen by both state licensing
16 authorities, and by ORR.

17 State licensing requirements cover
18 everything from reporting allegations of sexual
19 abuse to providing nutritious meals and snacks, the
20 number of square feet the children have in their
21 rooms, to the services they're provided, and much
22 more.

23 When a child is referred to ORR from
24 DHS, ORR has intake specialists who must make a
25 placement determination for each child within the

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1 network that is the least restrictive setting and
2 one that is in the best interest of the child.

3 ORR will identify any special needs
4 that a child may have and determine the best and
5 most appropriate placement for the child. For
6 example, ORR uses transitional foster care to house
7 children under the age of 12, or teens who are
8 pregnant or parenting so that they may receive
9 specialized care and services.

10 When the Unaccompanied Children's
11 program was transferred from the former U.S.
12 Immigration and Naturalization Service [INS] to the
13 Department of Homeland—or to the Department of
14 Health and Human Services, ORR became bound by the
15 Flores v. Reno Settlement agreement, which set
16 forth minimum standards and services that must be
17 provided to all unaccompanied children. And, ORR is
18 tasked with providing the care and custody until a
19 safe and suitable sponsor is found to provide care
20 and physical custody for the child while the child
21 waits for his or her immigration proceedings.

22 While the child is in ORR care, he or
23 she receives an array of services in accordance
24 with the Flores Settlement Agreement and state
25 licensing standards. When a child is admitted to

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1 ORR care, trained care service providers conduct
2 assessments of the child, including screenings,
3 interviews, interviews with the child's family,
4 interviews with potential sponsors, and then this
5 assessment is used as a first round of screening to
6 determine whether the child has any immediate
7 needs, and whether the child has been a victim of
8 abuse, of a crime, or of trafficking.

9 While children are in our care, each
10 child receives an initial medical examination and
11 medical and dental, and mental health services,
12 educational services, daily recreational
13 activities, also "Know Your Rights" presentations,
14 and legal service screenings, and for some legal
15 services, which is something that we've been
16 broadening recently. Access to religious services;
17 regular telephone calls with family members; case
18 management services, which include services to
19 identify a parent, or relative, or other
20 appropriate sponsor for release; individual service
21 planning assistance; and weekly and individual
22 counseling sessions.

23 We seek to place children awaiting
24 immigration removal proceedings with a parent or
25 relative or another appropriate sponsor. Most

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1 children do have a parent or other relative already
2 living in the U.S., and ORR assesses those
3 potential sponsors to insure the sponsor is safe
4 and suitable for the child, including background
5 checks, interviews with sponsors, and reviews of
6 the sponsor's ability to care for the child's well-
7 being.

8 In Fiscal Year 2014, approximately 95
9 percent of the children were released to a sponsor.
10 And, of the children not released to a sponsor,
11 some are remanded to Homeland Security once they
12 reach 18, others become eligible for legal
13 immigration status, and some children return
14 voluntarily or are removed to their country of
15 origin.

16 Finally, I'd like to discuss briefly
17 ORR's Interim Final Rule that covers standards to
18 prevent, detect, and respond to sexual abuse and
19 sexual harassment involving unaccompanied children.

20 ORR published the Interim Final Rule on
21 December 24th, 2014, and is accepting public
22 comments for 60 days, which is about February 23rd.
23 As an Interim Final Rule [IFR], the rule became
24 effective upon publication, and ORR care provider
25 facilities will have six months to implement the

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1 rule and come into compliance with it.

2 This rule includes a comprehensive set
3 of standards organized into 11 categories that
4 cover topics such as prevention and planning,
5 training and education, reporting, medical and
6 mental health care, and data collection. The
7 standards build upon and enhance existing state and
8 local laws, regulations, and licensing standards.

9 The rule applies to all ORR facilities,
10 excluding secure care providers and individual
11 foster care homes. All secure care providers are
12 directed to follow the Department of Justice's
13 [DOJ's] PREA regulation, and the individual foster
14 care homes are subject to ORR's policies and
15 procedures and state licensing standards, but
16 they're not subject to the IFR because they're a
17 community-based placement.

18 Our care provider facilities are
19 already complying with many portions of the rule
20 because of their state licensing requirements, but
21 the rule will insure that care providers are taking
22 all the necessary and required steps in a
23 formalized process to fully insure the prevention,
24 detection, and proper response to any allegations
25 or incidents of sexual abuse and sexual harassment.

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1 Thank you.

2 CHAIRMAN CASTRO: Mr. Landy?

3 MR. LANDY: Chairman Castro and members
4 of the Commission on Civil Rights, thank you for
5 the opportunity to discuss recent detention reform
6 initiatives at Immigration and Customs Enforcement.

7 My name is Kevin Landy, and I'm the
8 Assistant Director of the ICE Office of Detention
9 Policy and Planning [ODPP]. ODPP was established in
10 2009 to help coordinate ICE's efforts to reform the
11 immigration detention system.

12 Our national immigration detention
13 system has expanded rapidly in the last 20 years,
14 growing from an average daily population of less
15 than 7,500 detainees to over 33,000. I'm sorry,
16 7,500 detainees in 1995. This growth has presented
17 challenges to ICE, and in 2009, DHS announced a
18 broad and long-term effort to reform the
19 immigration detention system. The goal of this
20 reform was to insure that conditions of confinement
21 would be consistent with the civil nature of
22 immigration detention.

23 ODPP was established to spearhead ICE's
24 detention reform initiatives both by implementing
25 short-term improvements and by identifying long-

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1 term solutions to further the agency's civil
2 detention reform—civil detention priorities.
3 Improvements have included developing facilities
4 more appropriate for the agency's detained
5 population and improving conditions at existing
6 facilities, reducing the number of people
7 transferred away from their families, communities,
8 and attorneys, insuring that detainees receive
9 adequate medical and mental health care, and that
10 detention facilities receive necessary federal
11 oversight.

12 The Commission has asked that I discuss
13 two specific reforms, in particular; the 2011
14 Performance-Based National Detention Standards, and
15 the implementation of DHS PREA regulations.

16 The PBNS 2011 detention standards are
17 the most updated version of ICE's standards. To
18 develop these standards, ICE worked with a variety
19 of agency stakeholders, including non-governmental
20 organizations and ICE field offices, as well as
21 CRCL, in particular, as Megan mentioned. PBNS 2011
22 improves upon the safeguards and protections
23 contained in earlier versions of detention
24 standards in a number of ways, including additional
25 medical and mental health services, increased

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1 access to legal services, enhanced religious
2 opportunities, stronger protections for detainees
3 with limited English proficiency and disabilities,
4 stronger safeguards against sexual abuse and
5 assault, and stronger protections for vulnerable
6 populations, including women, individuals with
7 mental illness, and victims of abuse.

8 PBND 2011 currently applies to 60
9 percent of ICE's average daily population,
10 including all ICE facilities that exclusively house
11 ICE detainees, which are known as dedicated
12 detention facilities.

13 For a facility to move to new detention
14 standards, ICE must engage in negotiations and
15 execute contract modifications. This is a long
16 process, but ICE is continuing to pursue
17 implementation of these standards in additional
18 non-dedicated facilities with priority given to
19 facilities housing the largest populations.

20 Next, I will discuss ICE's work in
21 implementing DHS PREA regulations. Prior to the
22 issuance of PREA regulations, ICE developed strong
23 safeguards against sexual abuse or assaults in both
24 agency policies and facility detention standards.
25 ICE's 2008 and 2011 PBND 2011 incorporate preventative

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1 measures such as screening, staff training in
2 detainee education, as well as requiring an
3 effective response to all incidents of sexual abuse
4 and assault.

5 In May 2012, ICE issued an agency-wide
6 directive on sexual abuse and assault prevention
7 and intervention which established a zero tolerance
8 policy for sexual abuse and assault for all
9 individuals in ICE custody, and outlined duties of
10 agency employees. The directive requires timely
11 reporting of allegations, a coordinated response
12 and investigation, and effective monitoring of all
13 incidents of sexual abuse or assault.

14 Pursuant to the 2012 ICE directive, ICE
15 appointed an agency-wide Prevention of Sexual
16 Assault Coordinator, along with multiple such
17 coordinators in each field office. It also deployed
18 comprehensive training on sexual abuse and assault
19 prevention, and intervention for all ICE employees
20 who may have contact with detainees, and developed
21 detainee awareness and education materials on ICE's
22 sexual assault policies.

23 In March 2014, as you've heard from
24 Megan [Mack], DHS promulgated its regulations under
25 PREA. This rule built upon existing agency policies

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1 and practices, outlined robust requirements for
2 prevention, intervention, reporting, and
3 investigation. ICE is currently compliant with all
4 DHS PREA requirements applicable to the agency.

5 In May 2014, ICE updated its original
6 directive on sexual abuse and assault prevention to
7 incorporate several additional DHS PREA
8 requirements not already covered by the original
9 policy.

10 In September 2014, ICE also promulgated
11 a new policy integrating PREA requirements
12 specifically applicable to ICE short-term holding
13 facilities.

14 In regard to PREA's application to ICE
15 facilities, PREA requires that all new, renewed, or
16 substantively modified detention facility contracts
17 incorporate the PREA standards. ICE will also
18 proactively pursue opportunities for incorporating
19 the PREA standards at other detention facilities,
20 including all dedicated facilities.

21 At the current time, DHS PREA
22 requirements are contractually binding on six
23 detention facilities, including all three of ICE's
24 family residential facilities; however, it's
25 important to note that the sexual assault

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1 safeguards contained in either PREA or PBNDS 2011
2 already apply to approximately 80 percent of the
3 agency's average daily population. This number
4 grows to 95 percent of the agency's average daily
5 population when excluding those detainees who are
6 held in U.S. Marshals Service [USMS]-contracted
7 facilities, which are covered by the Department of
8 Justice PREA regulations.

9 As a final note, I would like to very
10 quickly highlight a few additional reforms. Megan
11 referred to our recent directive on the review of
12 the use of segregation for ICE detainees. This very
13 progressive policy established procedures for the
14 review and oversight by ICE field offices and
15 headquarters of decisions to place any ICE detainee
16 in segregated housing for 14 days or more, or
17 placements in segregation for any length of time in
18 the case of detainees with health factors or
19 special vulnerabilities. Any such segregation
20 placement is reviewed on an ongoing basis by
21 headquarters offices, as well as field offices.

22 We also completed nationwide deployment
23 of a new automated risk classification assessment.
24 This tool improves transparency and uniformity in
25 detention and custody classification decisions,

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1 aids in identifying vulnerable populations, and
2 promotes a prioritization of detention resources.

3 Finally, ICE has made great strides in
4 reducing long distance transfers of detainees by
5 increasing detention capacity where it is most
6 needed and issuing a policy in 2012 that regulates
7 and limits transfers. These steps insure that
8 detainees can remain close to their families and
9 attorneys and also prevents disruptions to ongoing
10 immigration proceedings.

11 We continue to strive for additional
12 reforms in these and other areas, and we will
13 continue to ensure that the conditions at ICE
14 detention facilities are safe, humane, and
15 appropriate for the nature of our detained
16 population.

17 I would like to thank the Commission
18 again for its interest in immigration detention
19 reform, and for the opportunity to provide this
20 statement.

21 CHAIRMAN CASTRO: Thank you, Mr. Landy.
22 We are now going to open it up to questions from
23 Commissioners. As I always do, I will attempt to be
24 fair in apportioning the time, so if Commissioners
25 want to ask a question, just flag for me your

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1 interest, and I will make a list and try to call on
2 everyone in an orderly fashion.

3 I will, however—I see Commissioner
4 Yaki. Take Commissioner's—Chairman's privilege and
5 ask the first questions. I actually have four
6 specific questions.

7 I appreciate your testimony today and
8 the efforts that your agencies appear to be putting
9 into this topic, but I'm reminded of two years ago
10 for our other Statutory Enforcement Report on
11 Military Sexual Assault, we had a number of
12 generals and admirals sitting where you're sitting
13 on the first panel, all of whom told us all the
14 great things that they were doing to prevent
15 military sexual assault. And, yet, after that,
16 issues continued to come to light, significant and
17 serious issues about our men and women in uniform
18 being abused, despite all of the purported policies
19 and procedures that were put in place. And I'm a
20 little concerned about that here, as well. I mean,
21 it sounds great what you're doing, but yet we
22 continue to see that there are challenges that are
23 being faced by your agencies in complying with, or
24 at least enforcing these policies.

25 You know, I referenced at the

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1 beginning, the complaint that was filed by the
2 National Immigrant Justice Center [NIJC], the ACLU,
3 and others addressed to you, Ms. Mack, I'm sure you
4 saw this, that just lists some appalling things
5 that happened to the children, unaccompanied
6 children, sexual abuse, physical abuse, just a
7 whole series of things that are just not in keeping
8 with who we are as a country.

9 I'd like to know what has been done by
10 your agency or any of the agencies here to
11 investigate these allegations and to address them.

12 MS. MACK: Thank you, Chairman Castro.
13 In the first half of Fiscal—first, my office takes
14 these complaints very seriously, and we've worked
15 closely through the years with regular meetings
16 with nongovernmental organizations in order to make
17 sure we're hearing all of the complaints that are
18 out there that we can gather.

19 We visit detention facilities on a
20 regular basis, and I've made a priority of going to
21 family detention facilities as they're being
22 brought on line. My staff will be in Dilley next
23 week to review that facility and see how the
24 conditions of confinement are there.

25 When we receive a complaint from an

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1 organization like NIJC from Mary Meg McCarthy, or
2 from other organizations, we follow up with the
3 person who has sent the complaint. We ask any
4 questions, we open investigations. So, in the first
5 half of Fiscal 2014, for example, about half of the
6 new investigations that we opened, or 71 out of the
7 149 we opened, pertained to either ICE—pertained to
8 ICE detention, and more than 20 others involved CBP
9 ports of entry and checkpoints, and unaccompanied
10 children.

11 We have a team of experts that are on
12 contract with my office in a variety of areas,
13 including medical and mental health care,
14 conditions of confinement, environmental health and
15 safety, and other areas. They come with us to the
16 facilities, so our staff really conduct their
17 review of the facilities and medical files. They
18 pull files, and if they see a problem, they pull
19 more files.

20 We went to Artesia, New Mexico, last
21 November, and then Karnes Detention Facility in
22 December, so Dilley will be the third major—the
23 large new detention facility we visited.

24 And then the experts submit reports to
25 us, and we work with ICE. We make recommendations

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1 and work with ICE to resolve issues that we find
2 there.

3 CHAIRMAN CASTRO: So, as it relates to
4 these complaints, in particular, were you able to
5 determine whether they were justified? Were there
6 corrective action taken? How were those specific
7 complaints as it relates to those unaccompanied
8 children listed in the complaint from NIJC
9 addressed?

10 MS. MACK: So, I don't believe our
11 recommendations had been finalized. And the process
12 is that those are protected under deliberative
13 privilege until we hear back from ICE or CBP about
14 the complaints. And I can check to be sure, but I
15 don't believe those complaints, we have final
16 recommendations on those. Once we have final
17 recommendations, we report out in our annual report
18 and our quarterly reports to Congress.

19 CHAIRMAN CASTRO: So, we can expect at
20 some point specific—something specific to address
21 these issues?

22 MS. MACK: It should be in our annual or
23 quarterly report. We don't issue findings publicly
24 in a report on each individual complaint that we
25 open. There are probably over 400 complaints that

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1 we do a year, so what we do is compile them by
2 topic in our annual report. And you can see the
3 annual reports on line. We'd be happy to submit the
4 most recent reports.

5 CHAIRMAN CASTRO: So, if an organization
6 like NIJC wanted to find out specifically what
7 happens on those individual complaints, would they
8 be able to obtain that information, or who does it
9 go to, the specific information about these
10 allegations?

11 MS. MACK: I'm not aware that any of our
12 reports have ever been FOIA [Freedom of Information
13 Act]'d for example, but that would be the way—the
14 only way that I'm aware of that a report could be
15 attempted to be obtained.

16 CHAIRMAN CASTRO: Okay.

17 MS. MACK: So, the reports are within
18 the government in order to make improvements within
19 the government, and then information that we report
20 out in the annual report to Congress is far more
21 general.

22 We do a close letter to individual
23 complaints, and so NIJC will get a close letter
24 that does provide more detail. And that's addressed
25 to them, specifically, on how the complaint was

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1 resolved.

2 CHAIRMAN CASTRO: Okay. In your earlier
3 remarks, you talked about Anti-Trafficking Law, and
4 how Border Patrol is essentially for non-
5 contiguous—for contiguous countries like Mexico,
6 making determinations as to whether or not, for
7 example, in the case of the unaccompanied children,
8 whether they had a fear of going back, whether
9 there was a trafficking issue which would allow
10 them to stay.

11 How can—I have a hard time figuring out
12 how a Border Patrol agent can make a determination
13 that in most instances is being done by an
14 immigration judge with due process. Could you
15 elucidate me on that?

16 MS. MACK: So, the responsibility—and
17 Franklin [Jones] may have more to add to this. . .
18 .

19 CHAIRMAN CASTRO: Anyone who has
20 something to add, feel free.

21 MS. MACK: I'll start. The
22 responsibility is for screening, not for
23 adjudication of claims, of credible fear, to find a
24 credible fear. And I'm sure Ms. McCarthy can speak
25 much more to this issue, as well.

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1 CHAIRMAN CASTRO: But I'd like to hear
2 what our government has to say about it, though.

3 MS. MACK: So, we screen for fear, and
4 it's a simple questionnaire that we provide and go
5 through, so officers go through the questions. If
6 someone expresses a fear, then under our law, we're
7 required to find a credible fear. And then they
8 have more rights under the—to not be returned.

9 And as I said in my remarks, the
10 contiguous countries are the ones where we screen
11 initially. The other countries will be screened on
12 there when they go to HHS custody, but we screen
13 them, as well, as a matter of policy. And,
14 Franklin, I don't know if you want to add to that.

15 MR. JONES: Yes. And as a matter of
16 practice, they are provided with a checklist, if
17 you will, the officers, they go through the
18 checklist and they give the individual their
19 rights, and the assessment is—the agent is not
20 responsible for making or allowed to make an
21 assessment. If the individual indicates that he or
22 she meets the requirement, then that individual has
23 to be referred for additional screening.

24 CHAIRMAN CASTRO: And if they don't meet
25 the requirement, who makes the determination?

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1 MR. JONES: The agent. It's based upon
2 how they answer the questions. The questions are,
3 if you will, a series of questions that rise to the
4 level of what we consider to be the standard for
5 alleging credible fear. So, they do have to answer
6 a series of questions, and depending upon that
7 answer initially for citizens of Mexico, they're
8 then returned to their Mexican consulate.

9 CHAIRMAN CASTRO: So, it is the agent,
10 then, that makes that determination?

11 MR. JONES: Well, it's the process, I
12 would say, and not the agent. The answers determine
13 the outcome, and it's not a subjective belief of
14 the agent that determines the outcome.

15 COMMISSIONER KLADNEY: Mr. Chairman?

16 CHAIRMAN CASTRO: Yes.

17 COMMISSIONER KLADNEY: Can we ask Mr.
18 Jones to supply us with the questionnaires?

19 CHAIRMAN CASTRO: That would be great.
20 Would you be able to provide us with that?

21 MR. JONES: Yes, it is a form. I believe
22 I can. And to the extent it's not privileged,
23 certainly.

24 CHAIRMAN CASTRO: Well, I would imagine
25 it shouldn't be privileged, but—I'd be surprised if

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1 a document like that would be privileged, but I'm
2 sure we can work out a situation where you can
3 provide that to us.

4 MR. JONES: Okay. But it may well be in
5 proceed-in terms of-

6 CHAIRMAN CASTRO: We don't need the
7 filled out ones. We just need the blank one.

8 MR. JONES: Okay.

9 CHAIRMAN CASTRO: Okay? To see what kind
10 of questions you're asking.

11 MS. MACK: I would add, if I have a
12 moment, that UNHCR [UN High Commissioner for
13 Refugees] program is working with ICE on reviewing
14 the form, so I don't know where that process is,
15 but I know that the form has been subject-you know,
16 people have had a look at it. I think it's Google-
17 able. Even if the government doesn't release it,
18 your staff could easily get it.

19 CHAIRMAN CASTRO: Okay.

20 MR. JONES: It is a public form. I can't
21 remember the number.

22 CHAIRMAN CASTRO: I appreciate that.
23 Recently, we received here at the Commission a
24 number of complaints, copies of complaints that
25 were submitted involving religious freedom

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1 submitted to us by the American-Arab Anti-
2 Discrimination Committee involving religious
3 freedom at the Stewart facility. Are you—any of you
4 aware of these complaints?

5 MS. MACK: It's very possible my
6 organization has gotten them. We have a close
7 relationship with that, with ADC [Anti-
8 Discrimination Committee], so—but I'm not aware
9 specifically.

10 CHAIRMAN CASTRO: What do you do when
11 you handle these—when you receive these?

12 MS. MACK: I can submit that within the
13 time that's allowed, but I don't know off the—I
14 don't have—

15 CHAIRMAN CASTRO: Well, before you
16 leave, I'm going to hand these to you and make sure
17 that they—if you could please commit to take a
18 close look at these. These are significant and
19 serious issues.

20 MS. MACK: Yes, of course.

21 CHAIRMAN CASTRO: And, finally, I want
22 to ask—one thing we didn't hear from you all but is
23 important to us in this investigation is the
24 treatment of transgender individuals. It's our
25 understanding that the largest agency that has

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1 custody of transgender individuals is the
2 Department of Homeland Security. Could you talk—any
3 of you talk a little bit about the treatment of
4 transgender individuals in detention facilities?

5 MR. LANDY: Yes, I can start with that,
6 and maybe Megan [Mack] will have something to add.
7 ICE has been progressive in this area, and I'll try
8 to remember all of the different areas in which our
9 policies address protections of transgender
10 detainees, as well in our detention standards.

11 We require individualized assessments
12 for any transgender detainees arriving at a
13 facility regarding, for example, their ideal
14 housing placements, and custody and classification.
15 Decisions as to what housing unit to place them in
16 may not be based solely on the biological anatomy
17 of that individual, but must take into account that
18 individual's gender identity.

19 Let me move forward a little bit
20 earlier in the process, the actual apprehension
21 process. After somebody's been apprehended, I
22 mentioned that they're screened through. During
23 their book-in, the officer enters information
24 through the risk classification assessment tool
25 which is part of our book-in module and, therefore,

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1 is preserved electronically. The officer is
2 required to ask initially a number of questions
3 about whether any of a variety of special
4 vulnerabilities apply. One of those special
5 vulnerabilities is whether that individual might
6 fear for their safety in detention due to their
7 gender identity or sexual orientation, so that's a
8 factor being taken in immediately.

9 With respect to treatment while in
10 detention, the medical care standard of the
11 detention standards guarantees a right to hormone
12 therapy for individuals who need it for treatment.
13 And even in facilities that are not covered by that
14 standard, our ICE service corps is very vigilant on
15 that issue to ensuring that individuals receive
16 necessary hormone therapy.

17 We—in our segregation directive which
18 we have mentioned, the policy indicates that no one
19 may be placed in segregation solely due to being
20 transgender, that we cannot have a default policy
21 that anybody who's transgender will inherently be
22 vulnerable. There has to be an individualized
23 assessment in all cases. And they're actually—we
24 immediately become aware when somebody who's
25 transgender is placed in segregation, and we look

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1 at those cases very carefully.

2 Our statistics indicate that at any
3 given time, on average only one transgender
4 detainee is in segregation in our entire system for
5 more than 14 days at a time. We don't know about
6 those—well, I'm sorry, those are the statistics
7 that I can recall most easily. But those cases are
8 rare. We have a special housing unit in the Los
9 Angeles area dedicated to the—to gay, bisexual, and
10 transgender detainees. Individuals who prefer a
11 transfer even across the country to that facility
12 for their safety, rather than being in a general
13 population housing unit, are afforded that
14 opportunity. And we have transferred many people
15 long distances at their choice to that unit.

16 And we have an ongoing working group in
17 this area to consider additional reforms on these
18 issues, including adopting the most progressive
19 policies. There are a couple of jails in the entire
20 country that have essentially transgender
21 committees. I think the acronym is TCCC
22 [Transgender Care and Classification Committee], if
23 I'm not mistaken. I don't recall what that stands
24 for, but like a committee of healthcare providers,
25 security staff, and administrators. In this case,

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1 it might include ICE professionals. These are the
2 policies that exist at other jails which we're
3 considering, which carefully consider the treatment
4 options, housing options for transgender
5 individuals. So, it's an issue we're very aware of.
6 And we respond, of course, to any concerns or
7 allegations we hear, which we do hear from time to
8 time from NGOs or attorneys about individuals.

9 CHAIRMAN CASTRO: Thank you, Mr. Landy.
10 I'm sure my colleagues will have some follow-up
11 questions on that.

12 Before I turn it over to Commissioner
13 Yaki, myself and some of my colleagues on the
14 Commission are planning to come and pay a visit to
15 some detention centers, and we would hope that we
16 could ask for each of your assistance in
17 facilitating our visit. Could we count on that?
18 Yes. Ms. Mack is nodding yes, so thank you. We
19 appreciate that.

20 I'm going to ask my special assistant,
21 Ms. Mack, to give you these complaints and the
22 documents that we asked for, you can send those to
23 our Office of Civil Rights Evaluation. Commissioner
24 Yaki?

25 COMMISSIONER YAKI: Thank you very much,

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1 Mr. Chair. Thank you, again, for your leadership
2 and holding this briefing.

3 CHAIRMAN CASTRO: Thank you.

4 COMMISSIONER YAKI: I have a question I
5 guess that goes to—starts with Mr. Landy and may
6 filter out to some of the other folks here, and
7 probably elsewhere in other panels. But I want to
8 focus a little bit about the mandate that Congress
9 has to maintain a level of not less than 34,000
10 detention beds at any different point in time.

11 I imagine that in policy and planning,
12 having to figure out a way to insure that number
13 affects not just how—whether or not you can
14 physically do it, but from a logistical point of
15 view, how is it that you get to that point? In
16 other words, one of the criticisms, for example, is
17 that the actual number of violent offenders, and
18 violent as in real violence, that are in these
19 facilities is somewhere in the very low teens or
20 maybe even single digit ranges. And there's a
21 criticism that in order to meet that mandate, the
22 Department is reaching down, so to speak, to get
23 people who maybe have a DUI [driving under the
24 influence], or marijuana, or some other kind of
25 non-violent offense.

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1 I don't want to put you on the spot,
2 but I guess I will, which is I know that in a
3 former life, the now President of UC [University of
4 California], but the then Homeland Secretary Janet
5 Napolitano, went to Congress and said we need to
6 deal with this quota situation. I just want to know
7 how—two parts. How does this quota drive your
8 Department's policy, and how would it be different,
9 do you believe, if that quota were removed?

10 MR. LANDY: Well, with respect to the
11 question as to who is being apprehended and whether
12 it requires us to apprehend individuals who are not
13 priorities, as you probably know, in 2011, [ICE]
14 Director John Morton issued enforcement priorities
15 policy, which has very recently been replaced by a
16 Department, a DHS Executive Action, which very
17 clearly lays out the enforcement priorities for
18 the—for ICE. And it's certainly not limited to
19 people who've been convicted of violent crimes. It
20 includes people, for example, who have committed
21 aggravated felonies of any type, people who've been
22 convicted of three or more misdemeanors, not
23 counting misdemeanors such as traffic offenses, and
24 people who've been convicted of at least one
25 significant misdemeanor. And then, also, certain

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1 types of immigration violators, people who have
2 received a final order after January 1 of 2014, so
3 not necessarily criminals. People who have entered
4 the country after January 1, 2014.

5 The statistics from prior years under
6 the Morton Directive showed that ICE was able to
7 fill its ICE—its detention beds with priority—
8 people who fell into one of the priority
9 categories. A very large percentage of that
10 population is going to be border crossers.
11 Especially during these years, there's a massive
12 influx across Rio Grande Valley of adults, adult
13 individuals, and it was difficult to even—you know,
14 it was difficult to find detention capacity. During
15 the height of those surges, which were seasonal, it
16 was difficult to find sufficient detention
17 capacity. And many of those people are not—do not
18 have prior criminal convictions. But our statistics
19 have indicated that 97 percent, roughly, at times
20 of the average daily population of our system met
21 one of these priorities, or their detention was
22 mandatory by law.

23 Other than that, with respect to the
24 quota driving-policies, the [Obama] Administration
25 has not supported the 34,000 quota that Congress

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1 expects—that Congress appropriates resources for
2 that detention capacity, and expects ICE to use
3 those resources for that number of beds. I'm not
4 part of the enforcement and removal operations
5 component within ICE, which is responsible for
6 apprehensions. It is the case that in recent years,
7 ERO [Office of Enforcement and Removal Operations]
8 has been able to more or less achieve that 34,000
9 number, notwithstanding fluctuations in the course
10 of the year. By the end of a fiscal year, the
11 average typically has been around 34,000, so it's
12 something they're certainly striving to do in
13 accordance with Congress's directive. But I
14 couldn't speak to exactly how they're able to
15 arrive at that target beyond the fact that they are
16 working very hard to comply with their enforcement
17 priorities.

18 COMMISSIONER YAKI: Okay, thank you.
19 Okay, thank you very much.

20 This question is aimed at Mr. Jones and
21 Ms. Mack. Frequent—we've heard a lot of criticism
22 about the handling of persons coming over the
23 border at—not just during the surge, but in other
24 points as well. The question I have—there are two
25 questions. One is, when you talk about this

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1 questionnaire, part of me was, for lack of a better
2 word, laughing a little bit because you are asking
3 questions about people who may be literate, semi-
4 literate- probably not conversant in English. And
5 my question is, how do you assure that they fully
6 understand what these questions mean in terms of
7 what our objective standards are? I understand you
8 say that we have a form, they-the answers determine
9 what we do or not, but the facts seem to indicate
10 that 83 percent of these folks, especially during
11 the surge, were being sent home without a hearing,
12 without a judge, anything like that, just based on
13 being turned away no matter-and that number seems
14 very, very high. And maybe it's justified or not,
15 but in the absence of knowing that there are
16 culturally competent individuals present to be able
17 to help deal with the translation question-and-
18 answer system, do you have that in place? And how
19 do you assure that the answers that you're getting
20 are real and true answers? Because I can tell you
21 that from my own experience dealing with asylum
22 seekers in other countries, sometimes you need to
23 ask-there are cultural issues about-can you really
24 ask them about rape? Can you ask them about other
25 family members? Are they afraid that any answer

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1 that they give to you is going to be then
2 communicated back to their home country, so maybe
3 they tend not to be as truthful as they should be?
4 So, how do your agencies deal with that issue for
5 people who are coming over and getting into that
6 questionnaire phase?

7 MR. JONES: I think the Chairman's
8 question pertained to Mexican nationals, so with
9 regard to Mexican nationals, all of the Border
10 Patrol agents speak Spanish. And they are trained
11 at the academy, and 50 percent of the Border Patrol
12 is of Hispanic descent, and many of them come to us
13 already speaking Spanish. And they are first and
14 second generation Americans, as well.

15 So, while we cannot be certain as to
16 whether or not the person being interviewed is
17 providing a truthful answer, but the agents are all
18 trained to process within policy, if you will. And
19 so that's the thing that we focus on as an agency,
20 that we are consistent, that we are fair, and that
21 we ensure that everyone is properly interviewed.

22 COMMISSIONER YAKI: But, do you—I guess
23 what I'm asking is, do you have someone, for
24 example, who understands country conditions in a
25 certain region of Mexico, in Colombia, in

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1 Venezuela, in Guatemala, in Nicaragua? Are there
2 people there who could maybe provide a context for
3 the answers? Say, for example, this person, they
4 say they come from Village X, and you would
5 understand if working with a refugee group from
6 Village X was the subject of horrific cartel murder
7 or something like that. I mean, how do we—how do
8 you determine the cultural, geographic, and I guess
9 human context of what it is that they may be trying
10 to express to an official of a government that
11 they're unfamiliar with? And I think it's great
12 that there are the high number of Latino members of
13 your force that you have, but how do you make sure
14 that they're really, truly grounded in what it is
15 that these people may be trying to, or want to
16 communicate, but may be afraid to communicate to
17 someone operating under the color of law?

18 MR. JONES: Well, at the Executive
19 level, yes, we are familiar with the conditions
20 throughout Mexico, in the various communities
21 within Mexico. At the individual agent level, I
22 cannot speak to that. What I can say is that they
23 are trained to be consistent in terms of how we
24 process people, and to treat people with dignity
25 and respect. And that is a core principle of CBP.

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1 As to their understanding of the higher political
2 or socioeconomic situations as to why people are
3 coming to us, I can't speak to the individual
4 officer's assessment, but I can speak to what we
5 ask them to do.

6 COMMISSIONER YAKI: Okay.

7 CHAIRMAN CASTRO: Commissioner, I'm
8 going to move on to the Vice Chair.

9 COMMISSIONER YAKI: Sure.

10 CHAIRMAN CASTRO: And then we can come
11 back with additional time.

12 COMMISSIONER YAKI: Sure.

13 CHAIRMAN CASTRO: Madam Vice Chair?

14 VICE CHAIR TIMMONS-GOODSON: Thank you
15 very much, Mr. Chair.

16 This question is for Mr. Jones, and it
17 kind of follows up on the direction in which
18 Commissioner Yaki has been headed. But it would
19 appear that the Customs and Border officers are
20 critical players in this immigration process, and
21 the screening, and the selection, and the training
22 of those individuals would be equally as important.

23 I'd like for you to talk to us, please,
24 Mr. Jones, about the selection, the training of
25 your officers, and the supervision that would go

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1 along with that. And then I'd ask you to detail any
2 problems that have arisen, the kinds of
3 disciplinary actions that have been taken, or could
4 be taken, in connection with problems that arise.
5 And then after you answer that, I might have
6 another follow-up. But go ahead, please.

7 MR. JONES: Thank you, ma'am. Thank you,
8 Vice Chair.

9 The selection process is, we advertise
10 for Border Patrol agents, if you will, probably
11 twice a year. We have a federal floor in terms of
12 the number of Border Patrol agents that we have to
13 have on duty at any given time. I think the number
14 is 21,364, give or take a few.

15 VICE CHAIR TIMMONS-GOODSON: Is there a
16 ratio or some kind of-

17 MR. JONES: No, just a set number by
18 Congress mandated that we have a specific number of
19 Border Patrol agents on board at any-always. So,
20 we-our turnover is about between 2-1/2 to 3 percent
21 in any given year. The majority of our turnover
22 would be Border Patrol agents who are leaving to
23 take other law enforcement positions, primarily
24 with ICE, if you will, so we do a lot of training
25 on behalf of ICE.

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1 But the selection process is rigorous
2 in terms of—there's testing, there are structured
3 interviews, physical examinations for officers
4 before they're hired. And upon hire, all Border
5 Patrol agents are—attend our basic training academy
6 in Artesia, and they have to successfully complete
7 the academy before they are actually considered to
8 be Border Patrol agents and assigned to the field.

9 Once they're assigned to the field,
10 they're put into a field training program for the
11 next two years, and the field training supervisors
12 are assigned to train them for the next two years.
13 So, it takes us two years to be considered, over
14 two years because of the time spent—so, two and a
15 half years to be considered fully trained to be a
16 Border Patrol agent.

17 VICE CHAIR TIMMONS-GOODSON: Well, how
18 many of your agents are fully trained?

19 MR. JONES: Presently, everyone is fully
20 trained except those who are either in the academy
21 or still in the field training program, so that
22 number would be in the low hundreds at any given
23 time because of the attrition rate and then the
24 backfill. So, that number would be low, it would be
25 something we could find, but it's not something

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1 that we actively track.

2 So, the next part of your question
3 dealt with performance or conduct issues.

4 VICE CHAIR TIMMONS-GOODSON: Yes.

5 MR. JONES: I would say that we have
6 the—probably the same or similar rate of misconduct
7 as you find in the general population, and in the
8 general workforce. We have a standard of conduct
9 that we apply, we have—our Office of Internal
10 Affairs is assigned to—along with the Office of the
11 IG, to investigate serious allegations of
12 misconduct, inappropriate behavior. And in all
13 instances, all allegations are investigated, and if
14 they are proven, then corrective action is taken.

15 VICE CHAIR TIMMONS-GOODSON: Thank you.

16 CHAIRMAN CASTRO: Commissioner Kladney?

17 COMMISSIONER KLADNEY: Thank you, Mr.
18 Chairman.

19 Mr. Landy, what determines detention?

20 CHAIRMAN CASTRO: I think your mic went
21 off, Commissioner Kladney.

22 COMMISSIONER KLADNEY: Thank you. What
23 determines detention?

24 MR. LANDY: You mean who is it that
25 decides whether someone—

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1 COMMISSIONER KLADNEY: No, what factors
2 that you will hold a person in detention?

3 MR. LANDY: Well, I mentioned the
4 priorities that have been—are established,
5 Department [DHS] policy. When ICE—when it's the ICE
6 officers who are doing the apprehension in the
7 interior of the country, they make initial
8 decisions regarding who to apprehend based on those
9 priorities. Most ICE apprehensions within the
10 interior of the country are through the Criminal
11 Alien Program [CAP]. Typically, ICE will apprehend
12 people who have either been convicted and serving
13 time in prisons and jails, or—

14 COMMISSIONER KLADNEY: I think I'm
15 referring mostly to border crossings.

16 MR. LANDY: Okay.

17 COMMISSIONER KLADNEY: I mean, we all
18 know that if somebody has an order to leave and
19 doesn't leave, you arrest them.

20 MR. LANDY: Border crossers are
21 typically apprehended, of course, by CBP, usually
22 Border Patrol, some CBP at ports of entry, and CBP
23 puts them into—or sends them to ICE, puts them into
24 C—for ICE to take custody of them. Typically, they
25 are in expedited removal proceedings. By law, that

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1 means that detention is mandatory if they're in
2 expedited removal proceedings. If they request
3 asylum, then they are certainly granted the legal
4 protections, and are able to adjudicate their
5 claims, including an initial screening by an asylum
6 officer with USCIS [U.S. Citizenship and
7 Immigration Services]. But, typically—and there are
8 always exceptions for humanitarian reasons.
9 Typically, an adult apprehended at the border is
10 placed in detention under expedited removal
11 proceedings.

12 COMMISSIONER KLADNEY: Of those amnesty-
13 type of claims, the people who are released from
14 detention pending a hearing, how many appear for
15 their hearing?

16 MR. LANDY: I don't have those numbers.

17 COMMISSIONER KLADNEY: Does anybody have
18 those numbers? Would you have those numbers? Would
19 your office or your agency have those numbers?

20 MR. LANDY: ICE might have those
21 numbers.

22 COMMISSIONER KLADNEY: Okay. Can you
23 secure those and send them to us within the 30
24 days?

25 MR. LANDY: Sure. So, you're referring

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1 to people released after apprehension at the
2 border?

3 COMMISSIONER KLADNEY: Yes.

4 MR. LANDY: Yes.

5 COMMISSIONER KLADNEY: Pending a hearing
6 on their status.

7 MR. LANDY: Typically, if an adult were
8 released after having been apprehended at the
9 border, it would only be because they've been
10 determined to have a credible fear of persecution,
11 at which point their detention is no longer
12 mandatory.

13 COMMISSIONER KLADNEY: Oh, I understand
14 all that.

15 (Simultaneous speaking)

16 COMMISSIONER KLADNEY: I just wanted to
17 know the number.

18 Mr. Franklin-Jones, I'm sorry. Mr.
19 Jones.

20 MR. JONES: No problem. Yes, sir?

21 COMMISSIONER KLADNEY: Does the zero
22 tolerance sexual assault policy have the same force
23 of law that PREA has?

24 MR. JONES: In terms of administrative
25 policy, yes. It is a restating, if you will, of the

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1 PREA standard in the [ICE] Commissioner's policy,
2 so it's a reinforcing of the DHS PREA standards.

3 COMMISSIONER KLADNEY: But your private
4 contractors haven't adopted PREA willingly. You
5 have to negotiate that into a contract?

6 MR. JONES: When you say "private
7 contractors," for CBP—

8 COMMISSIONER KLADNEY: For detention.

9 MR. JONES: Okay. CBP, we don't do
10 detention, if you will. We only hold individuals
11 for the amount of time necessary to process them
12 and transport them to ICE. In extenuating
13 circumstances, we—

14 COMMISSIONER KLADNEY: Okay. Does
15 anybody on the panel have an answer to that? Ms.
16 Mack?

17 MR. LANDY: I could take it. If you're
18 referring to immigration detention facilities,
19 that's right, the Department—I'm sorry, the DHS
20 PREA regulations require that PREA apply when a
21 detention facility contract is either signed,
22 renewed, or substantively modified. That was
23 modeled after DOJ PREA regulations, although it's
24 more aggressive than those, in that the DOJ
25 regulations do not have the clause about requiring

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1 PREA to be adopted upon a substantive contract
2 modification.

3 COMMISSIONER KLADNEY: So, your
4 contractors don't just—won't just comply with that
5 until they're required to under contract.

6 MR. LANDY: Well, a number of
7 contractors have already been adopting PREA prior
8 to the contract negotiation, but technically,
9 standards are not legally binding on those
10 detention facilities until they're incorporated
11 into—

12 COMMISSIONER KLADNEY: Do you know which
13 ones have not volunteered to take those?

14 MR. LANDY: Well, the—I mentioned that
15 95 percent of our non-DOJ facility population is
16 covered by PBNDS 2011 protections, so right off the
17 bat—and the sexual assault safeguards in PBNDS 2011
18 are very comprehensive and comparable to what's in
19 DHS PREA—

20 COMMISSIONER KLADNEY: My question was,
21 do you know which contractors are not adopting
22 those voluntarily?

23 MR. LANDY: Facilities are not
24 typically—to the extent to which they're trying to
25 comply with DHS PREA standards in the absence of a

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1 contract modification, it's not something that
2 we're always aware of. I don't—I would say that,
3 you know, that would be more likely to be the case
4 with some of our larger—

5 COMMISSIONER KLADNEY: So, you don't
6 know who does, and who doesn't.

7 MR. LANDY: I wouldn't cite that. I'm
8 personally not citing that as an assertion that
9 particular—I don't want to give you the impression
10 that I think that that's happening in a particular
11 number of cases. I don't know. I can tell you
12 precisely how many facilities have legally or
13 contractually adopted PREA. I can tell you
14 precisely how many facilities have adopted
15 different detention standards, including PBNDS.
16 And, also, with respect to county jails that are
17 used by ICE, they are also governed by DOJ PREA
18 regulations, so I don't know how many of those
19 county jails have chosen to comply with that.

20 COMMISSIONER KLADNEY: Okay. Does a
21 detainee who's suffered an assault or sexual
22 assault in a facility have a right to sue a private
23 contractor?

24 MR. LANDY: I couldn't speak to what
25 legal rights they would have in that situation.

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1 COMMISSIONER KLADNEY: Does anyone know?
2 May I still continue, Mr. Chairman?

3 CHAIRMAN CASTRO: Why don't you ask
4 another question? I've got a couple along this
5 line, then I'm going to give it to Commissioner
6 Achtenberg after that.

7 COMMISSIONER KLADNEY: Thank you. Ms.
8 Bena, during the influx this summer of all the
9 minors, it's my understanding the government called
10 cities and counties and asked them to take as many
11 of these children as they could, the unaccompanied
12 minors. Is that—are you aware of that? No.

13 MS. BENA: I don't think I understand
14 the question. We notified cities and counties when
15 we were opening or expanding facilities in their
16 areas.

17 COMMISSIONER KLADNEY: No, no. I was
18 going to ask about when you take the children and
19 place them in foster care and things like that. How
20 does that function?

21 MS. BENA: The foster care for the
22 unaccompanied children is actually funded by ORR,
23 so it's not state or county foster care. Folks are
24 often confused with that, but it's ORR-funded, so
25 they're still in ORR custody, and still in the ORR

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1 care provider network.

2 COMMISSIONER KLADNEY: But they—so, do
3 you run your own program, or is it run through
4 localities?

5 MS. BENA: They're run through non-
6 governmental organizations, or private
7 organizations, not through the state or county
8 foster care system.

9 COMMISSIONER KLADNEY: If I can ask
10 someone, if a mother shows up with three or four
11 children and, say they have a relative in America,
12 and you are detaining the mother and the three or
13 four children, if the mother wants, can the
14 children be placed with the relative pending her
15 determination on detention?

16 MS. BENA: I have to defer to the DHS
17 folks, because we don't see the families.

18 COMMISSIONER KLADNEY: I guess Mr. Landy
19 and I could be talking all morning.

20 MR. LANDY: My understanding is that
21 typically that does not happen. The children would
22 stay with the parent or parents with whom they
23 crossed the border.

24 COMMISSIONER KLADNEY: But could it
25 happen? I mean, is there any—

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1 MR. LANDY: I'm not aware of it
2 happening, but it's possible I'm mistaken.

3 COMMISSIONER KLADNEY: I have some more
4 questions, but I'll yield.

5 CHAIRMAN CASTRO: We'll come back, yes.
6 Mr. Landy, along the lines of Commissioner
7 Kladney's initial questioning involving contract
8 facilities and specifically for-profit companies:
9 According to the 2014 Appropriations language,
10 President Obama asked that DHS not continue to
11 contract with deficient contract facilities.
12 Reports that we've seen show that there are abuses
13 as of 2014 at a number of CCA [Corrections
14 Corporation of America] facilities, for example,
15 and those facilities are still under contract with
16 DHS. Other reports show that DHS is not terminating
17 contracts with deficient facilities.

18 What does it take to get DHS to
19 terminate a contract with an agency that is
20 deficient in these areas of protection of rights?

21 MR. LANDY: I believe the provision
22 you're referring to, and it's been in
23 Appropriations law for many years, is that if a
24 detention facility fails an inspection, an ICE
25 inspection for two consecutive years, ICE may no

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1 longer use that facility, and ICE scrupulously
2 follows that policy. ICE conducts annual
3 inspections of its facilities. In fact, we have
4 several layers of oversight in addition to the
5 annual inspections.

6 ICE has withdrawn from detention
7 facilities where it was troubled, regardless
8 whether or not it failed one or more inspections.
9 ICE has withdrawn from detention facilities if it
10 was troubled by either individual—sorry, either a
11 single serious incident that occurred, or a series
12 of violations, or just poor conditions in general.
13 That has happened, certainly.

14 CHAIRMAN CASTRO: Are there reports that
15 are generated of these inspections?

16 MR. LANDY: Of the inspections?

17 CHAIRMAN CASTRO: That result in your
18 determination as to whether or not to keep a
19 facility or not?

20 MR. LANDY: With respect to
21 terminations? I don't know of any publicly
22 available reports of when ICE has withdrawn from
23 facilities, but that's not necessarily because they
24 failed two consecutive inspections. In fact, from
25 my knowledge of those instances where it has

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1 occurred, more often than not it's not because they
2 have failed consecutive inspections, it's because
3 of concerns that ICE had, and they acted
4 proactively.

5 CHAIRMAN CASTRO: So, if someone like us
6 wanted to see the results of these inspections,
7 where would we get that information?

8 MR. LANDY: Well, there are different
9 types of inspections, as I said. Inspections
10 conducted by the Office of Detention Oversight
11 [ODO], which is in the Office of Professional
12 Responsibility [OPR], are publicly available on our
13 website. The annual inspections conducted by ERO,
14 as far as I know, are not all publicly available.
15 Some of them have been FOIA'd, and if they're
16 FOIA'd, they are available in our FOIA reading room
17 on our website. And more of them can be FOIA'd.

18 CHAIRMAN CASTRO: So, FOIA is where you
19 suggest we— the process we use to get those?

20 MR. LANDY: Oh, I don't know whether—

21 (Simultaneous speaking)

22 MR. LANDY: Oh, I'm not—to the extent to
23 which they're publicly available now, that's my
24 understanding. If the Commission made a request for
25 additional inspection reports, you know, it's quite

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1 possible that ICE would provide those. I don't
2 know.

3 CHAIRMAN CASTRO: Well, I think we're
4 going to request those because I think they contain
5 a lot of information relevant to this
6 investigation.

7 And just as a point of clarification,
8 Ms. Mack, I'm going to give you these documents
9 about the complaints from the Arab-American
10 community. Your office did initially make a
11 response indicating that you're not going to talk
12 any further on this at the time, so my hope is that
13 you will take a closer look at these and do take
14 some action on the substance that is raised here.
15 Okay? Is that a yes? Just [let] the record reflect
16 that she's nodding yes. Thanks. Commissioner
17 Achtenberg.

18 COMMISSIONER ACHTENBERG: Thank you, Mr.
19 Chairman.

20 CHAIRMAN CASTRO: Thank you.

21 COMMISSIONER ACHTENBERG: Ms. Bena, I'd
22 like to more clearly understand the nature of the
23 treatment of the minors, both when brought into
24 custody, during custody, and after release. And, in
25 particular, could you explain how it is assessments

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1 are made about what kinds of educational needs
2 and/or special education needs, for example, that
3 these children may have, and how those needs are
4 being fulfilled both while they're in custody, and
5 after custody release? And how you know whether
6 these things are taking place?

7 MS. BENA: We do—our facilities are run
8 by social workers, so clinicians, trained staff.
9 And we do have a number of assessments that the
10 children go through. We can share with you the
11 various forms that we used in conducting the
12 assessments.

13 COMMISSIONER ACHTENBERG: Yes, I think
14 we'd like that.

15 MS. BENA: And we do have a number for
16 various issues, such as a trafficking, or
17 disabilities, because for children with certain
18 things, with certain issues like disabilities, or
19 if they've been subjected to trafficking, or sexual
20 abuse, or a crime, we do home studies before we
21 release them, and require post-release services
22 after their release so that the care for them
23 continues afterwards. So, I think to get a good
24 picture, we're very shortly, hopefully today,
25 possibly Monday, going to be posting a new policy

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1 guide that talks about the care, and the services
2 the children receive in the facilities, and then
3 we'll be able to provide all of the forms that go
4 with that.

5 What else can I tell you about post-you
6 want to know about post-release services, which is
7 something that we're very interested in because,
8 obviously, the number of kids has gone up greatly.
9 So, we're thinking about ways to improve and
10 increase the post-release that the children
11 receive.

12 COMMISSIONER ACHTENBERG: So, if a
13 child, for example, were not to be receiving the
14 kind of services that he or she was deemed
15 entitled-to which they were entitled, is there the
16 ability that someone might have to complain about
17 that, or what's the procedure that one would pursue
18 if one were not receiving the services to which he
19 or she was entitled?

20 MS. BENA: Yes, we have a number of
21 levels where we're able to go in and check on
22 what's happening in the facilities. So, we have ORR
23 federal field specialists who do go into the
24 facilities regularly, so actual ORR federal staff
25 who are visiting facilities weekly. We also have

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1 contracted care staff that check on the facilities,
2 as well as the facility staff, and then at
3 headquarters desk monitoring, but also visits, site
4 visits and monitoring to follow-up on what's
5 happening in the facilities. So, there are a number
6 of levels to the review that we're able to do, and
7 if something is found that's incorrect, there will
8 be corrective actions for the facilities, or
9 possibly closing facilities if what's supposed to
10 happen is not happening.

11 We're working on a number of different
12 ways for reporting the sexual abuse. We're
13 developing a new 800 number that's easier for the
14 children to access without anyone knowing that
15 they're doing the call. But, also, they also have
16 C-many of the children have individual attorneys.
17 We also have legal service providers that go into
18 the facilities regularly, so there are a lot of
19 people who are providing care and having an eye and
20 a look on what's happening with the children, in
21 addition to just the facility staff.

22 COMMISSIONER ACHTENBERG: I recognize
23 that there are not--these children and as other
24 detainees are not entitled to the assistance of
25 counsel, which is a fact that I bemoan but I

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1 understand that is the case. Is there any kind of
2 group of trained advocates that, you know, provides
3 a series or core supports for these detainees and
4 post-detainee protection, for the protection?

5 MS. BENA: Yes, we have a number of
6 programs in the works right now. So, we do have the
7 "Know Your Rights" presentations, we have a
8 contractor that does go in and provide Know Your
9 Rights presentations to the children. We also have
10 a video that was recently developed that also adds
11 to the information the children receive. And we
12 recently started a grant in specific states to
13 provide actual direct service to the children,
14 because it isn't required by statute, but one of
15 our goals is to increase the individual
16 representation for the children. We have—I think by
17 the summer we should have a new Request for
18 Proposals out for legal service providers to come
19 in and apply to provide legal representation to the
20 children.

21 COMMISSIONER ACHTENBERG: Do any of you
22 have any direct impact on the judicial—the judges
23 who make the ultimate determinations about asylum
24 and other topics?

25 MS. BENA: ORR doesn't, so I'll defer to

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1 some—I mean, our role is the care of the children,
2 and we include the legal services as part of that,
3 but we don't have any effect on the immigration
4 judges or hearings.

5 MR. LANDY: The immigration courts are
6 within the Department of Justice, Executive Office
7 of Immigration—

8 COMMISSIONER ACHTENBERG: Yes. And is
9 there any training that they receive at your
10 behest, or do you provide them with any kind of
11 overview information about the nature of the
12 phenomena that we're experiencing here?

13 MR. LANDY: I'm actually not sure to
14 what extent there is that communication or a
15 provision by ICE for one, of background information
16 for immigration judges beyond what would typically
17 be happening in the course of adjudications where
18 ICE attorneys are regularly interacting with
19 immigration judges. But that's something I'd be
20 happy to inquire about.

21 COMMISSIONER ACHTENBERG: Thank you very
22 much.

23 CHAIRMAN CASTRO: Okay. We have 15
24 minutes left, and this is the order of the next
25 questions. Commissioner Yaki has one quick

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1 question. We'll follow it up with Commissioner
2 Heriot, followed by Commissioner Kladney, Vice
3 Chair, and then the Staff Director. Commissioner
4 Yaki?

5 COMMISSIONER YAKI: Thank you very much,
6 Mr. Chair.

7 This goes, I hope to Ms. Mack, because
8 I'm not quite sure exactly what your purview is,
9 because the question I'm asking is--follows up on
10 what Commissioner Kladney and what Chairman Castro
11 were talking about, which is to what extent do we
12 require as a matter of law and contract that the
13 protections that someone would be afforded in a
14 federal facility are afforded at a private
15 facility, as well? And I mean by that not just
16 PREA, I mean by that training, I mean by that
17 access to records for inspection that apply to
18 federal agencies. What is it that we require as a
19 part of our contract right now to insure that
20 people who we send to these private for-profit
21 institutions are afforded at least the same kinds
22 of rights and protections as they would if they
23 were housed in a federal facility?

24 MS. MACK: So, I don't want to try to
25 skirt the question. Kevin will have more

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1 information on that, but I will say kind of as a
2 header to what his response might be that there
3 isn't a difference in the type of standards that
4 apply. You know, and he already responded to you
5 about us not being aware about the legal
6 obligations of a contractor, for example, but ICE
7 applies their standards across the board to
8 facilities to who—where they are in place.

9 MR. LANDY: So, our federal detention
10 standards are basically established federal
11 government requirements. All of our private
12 contractor facilities adhere to the most recent,
13 most rigorous level of the detention standards,
14 PBNDS 2011, which I mentioned. And those detention
15 standards are intended to apply robust safeguards
16 across the board, but we do consider that federal
17 policy. We consider that agency policy, which is
18 applied to our private contractor facilities
19 through contractual modifications. And that has
20 occurred in all instances for the private
21 contractors.

22 COMMISSIONER YAKI: So, everyone has to
23 abide by PREA, everyone has to abide by other
24 humanitarian laws that govern the treatment of
25 prisoners, not prisoners, detainees if they were in

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1 federal versus a private?

2 MR. LANDY: Right. Well, with respect to
3 the private contractor facilities, all of them are
4 governed by our most recent detention centers. Not
5 all of them are governed contractually by PREA in
6 that PREA is rolled out gradually. It has to be
7 applied through contract modifications. It's not
8 immediately applicable to our private contract
9 facilities, which is the same for Department of
10 Justice private contractor facilities, as well.

11 And as I mentioned, the PREA-DHS PREA
12 regulations are more rigorous in that respect in
13 terms of requiring quicker application of PREA.
14 There's also a commitment that DHS has made in the
15 preamble of the PREA regulations that PREA
16 regulations will be applicable, or that we will
17 endeavor to make PREA regulations applicable at all
18 of our dedicated facilities, which includes our
19 private contractor facilities, within 18 months of
20 the effective date.

21 COMMISSIONER YAKI: Okay. Just-

22 CHAIRMAN CASTRO: Commissioner Yaki-

23 COMMISSIONER YAKI: I'm just going to
24 ask him to send some document. Could you please
25 send to us a list of which facilities do or do not

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1 currently have PREA as part of their contract?

2 MR. LANDY: Yes.

3 COMMISSIONER YAKI: Okay, thank you.

4 CHAIRMAN CASTRO: Commissioner Heriot?

5 COMMISSIONER HERIOT: I—

6 CHAIRMAN CASTRO: Could you turn your
7 mic on?

8 COMMISSIONER HERIOT: Thank you.

9 CHAIRMAN CASTRO: There you go.

10 COMMISSIONER HERIOT: There we go. The
11 process of phasing in these PREA rules with
12 facilities that under contract: I'm assuming the
13 basic problem is these facilities are compensated
14 for their responsibilities. If you up their
15 responsibilities, then you have to increase the
16 compensation, and that's why the renegotiation has
17 to occur. But I also assume a facility is free to
18 either begin to implement the new PREA standards,
19 or maybe even do it entirely if they think this is
20 appropriate, even before the contract is actually
21 renegotiated, such that there may be facilities
22 that are implementing partially or fully the new
23 standards even if they're not yet renegotiated
24 contracts. Is that right?

25 MR. LANDY: That's correct. And, in

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1 fact, we have been told by our larger private
2 contractor companies in terms of those that operate
3 more of our facilities that they had been
4 undergoing, and have been undergoing to implement
5 the PREA requirements in advance of the contractual
6 modifications. But it's not legally and
7 contractually binding until it's incorporated in
8 the contract. And you're right, we might have to
9 address requests for additional compensation under
10 the contracts if PREA requires the facility to
11 incur additional costs.

12 COMMISSIONER HERIOT: What drives the
13 speed at which the contracts are renegotiated? Are
14 you waiting for some period of time when they are
15 up for renegotiation, or is it just a question of,
16 you know, you're doing this as quickly as you can?

17 MR. LANDY: Well, it's required by law
18 if the contracts are renegotiated or modified, and
19 then beyond that we will also—although not required
20 under the regulations, we do intend to proactively
21 seek implementation of PREA at additional
22 facilities.

23 COMMISSIONER HERIOT: So, you're working
24 on it, in other words.

25 MR. LANDY: Yes.

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1 COMMISSIONER HERIOT: Okay.

2 CHAIRMAN CASTRO: Commissioner Kladney,
3 followed by the Vice Chair and the Staff Director.

4 COMMISSIONER KLADNEY: Thank you, Mr.
5 Chairman.

6 Mr. Landy, how are you? I want to get
7 back to the [lesbian, gay, bisexual, and
8 transgender] LGBT question, when we were talking--
9 you were talking about segregated housing in the
10 Los Angeles facility. I think that was for
11 transsexuals. Is that correct?

12 MR. LANDY: Well, for gay, bisexual, and
13 transgender individuals.

14 COMMISSIONER KLADNEY: Okay. You know,
15 I've been in--I have visited many prisons. I have
16 not been in many. I mean, I've been in them but--how
17 is your segregated housing set up for LGBT people?

18 MR. LANDY: Well, we don't consider that
19 segregated housing. There's some--what is referred
20 to in most facilities as a segregation management
21 unit, which is what is often referred to as
22 solitary confinement, in which individuals are
23 confined--are kept--are housed in individual cells.
24 The housing unit I'm referring to is not that. It
25 has the same features of any other general

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1 population housing unit, free movement within the
2 housing unit, opportunities to commingle both
3 indoor and outdoor recreation among that group.
4 It's just that they are separate from the rest of
5 the population in order to insure their own
6 protection. And, again, with respect to people
7 transferred into that housing unit, it is
8 voluntary.

9 COMMISSIONER KLADNEY: And it's not like
10 a 23-hour a day indoor/1-hour a day outdoor
11 facility. Is it more like a prison as opposed to a
12 county jail?

13 MR. LANDY: It's the same requirements
14 that apply to this general population—sorry, to
15 this housing unit as any other general population
16 housing unit. They're not confined to their cells,
17 so they're moving freely about in the day room, for
18 example. I haven't been there. In terms of their
19 outside recreation, I don't know how many hours
20 they have literally in the outside recreation area.

21 COMMISSIONER KLADNEY: And do you do
22 this for all LGBT people, or—

23 MR. LANDY: Not at all, not at all. In
24 that field office that is the—within the Los
25 Angeles Field Office—

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1 COMMISSIONER KLADNEY: I guess what I'm
2 trying to get at is, how do you treat LGBT, not
3 just transsexuals, but there must be—if you're
4 talking about transsexuals, you're talking about,
5 you even said I think, a small number. But when
6 we're talking about LGBT, we may be talking about a
7 larger number. Is that correct?

8 MR. LANDY: Probably. We don't ask
9 people their sexual orientation or gender identity
10 unless they wish to come forward and indicate that
11 they—indicate it for some reason.

12 COMMISSIONER KLADNEY: Is there a reason
13 for that, that you don't ask?

14 MR. LANDY: Up until now, it's felt that
15 it should be up to the individual to volunteer it,
16 if they have a particular need. And that might be a
17 medical need, or it might be a concern about one's
18 own protection.

19 COMMISSIONER KLADNEY: Do you think
20 maybe—I mean, and I don't know. I'm just asking
21 that they may want to conceal that for any
22 particular purpose from the authorities, and not
23 ask for assistance, protection in housing, that
24 type of thing?

25 MR. LANDY: Yes, and up until now if

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1 that's the case, ICE would respect their wishes.

2 CHAIRMAN CASTRO: Thank you,
3 Commissioner Kladney.

4 COMMISSIONER KLADNEY: I just have one
5 C-just one more question of Ms. Mack. You mentioned
6 solitary confinement in your statement. Do you
7 recall that?

8 MS. MACK: I believe I said segregated
9 housing.

10 COMMISSIONER KLADNEY: Well, segregated
11 housing, then said in "solitary confinement." And
12 then you said that was for people—and I really
13 didn't understand that paragraph. Who goes to that
14 housing? And then you said there's regular checks
15 on those people, and they could be up in that kind
16 of housing for more than 30 days?

17 MS. MACK: So, I can find it. And,
18 again, you're fortunate, Mr. Landy is the expert in
19 this area.

20 COMMISSIONER KLADNEY: Gee, whiz. I
21 can't get away from this guy.

22 MS. MACK: But I can look and see if I
23 can find what I said.

24 COMMISSIONER KLADNEY: You said—I
25 actually have it here.

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1 MS. MACK: I'm sorry.

2 COMMISSIONER KLADNEY: It says, "The
3 Department has taken many important steps to
4 acknowledge the special vulnerabilities of
5 individuals with serious medical and mental health
6 conditions who are in civil immigration detention
7 and the obligation to provide appropriate
8 reasonable accommodations to detainees with
9 disabilities to insure that they can participate
10 fully in the programs and services offered across
11 the Department, including in detention.

12 So, for example, in 2013, ICE issued a
13 directive on segregated housing, often called
14 solitary confinement, that insures regular review
15 of long-term placements in a special housing unit
16 that has substantial additional requirements for
17 initial and regular review of detainees who have a
18 serious medical or mental health condition or
19 disability."

20 MS. MACK: Yes. And so that's something
21 that, indeed, Mr. Landy worked long and hard on for
22 some time, and spoke to, as well. But that's the
23 directive that requires certain procedures and
24 review be in place for people who are in housing
25 for 14 days or longer, or in these particular

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1 categories, anyone with a serious medical or mental
2 health concern.

3 COMMISSIONER KLADNEY: Well, my question
4 base—what I'm trying to get at is, again, Mr.
5 Landy, are they—these people placed in solitary by
6 themselves all day, or are they allowed to walk
7 around and mix in the yard, and things like that? I
8 mean, that wasn't very clear to me in this
9 statement.

10 MR. LANDY: So, this is a—

11 COMMISSIONER KLADNEY: Mic.

12 MR. LANDY: This is a hallmark of most
13 adult detention or correctional facilities.
14 Typically in segregated housing, individuals are
15 kept and are housed in their own cells, and
16 opportunities for commingling are limited. And in
17 some cases there's—and probably I would say in most
18 cases someone in segregating housing does not have
19 the opportunity to commingle. Certainly, they have
20 the opportunity to communicate with each other but
21 they're not physically in the same place.

22 Segregated housing is typically for one
23 of two reasons: as a form of discipline for people
24 who have committed serious disciplinary infractions
25 after there's been an adjudication by the facility,

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1 and that person has been found guilty of that
2 infraction, or for the safety and security of
3 either other detainees, staff, or the individual
4 himself or herself.

5 COMMISSIONER KLADNEY: Well, the-

6 CHAIRMAN CASTRO: Commissioner Kladney,
7 I'm sorry, I'm going to cut you off. Madam Vice
8 Chair, and then we're going to close with a
9 question from the Staff Director.

10 VICE CHAIR TIMMONS-GOODSON: Thank you
11 very much, Mr. Chair.

12 Mr. Landy, you are, indeed, a popular
13 fellow here today. It's clear from all that's been
14 said that our government relies very heavily on
15 private prisons. And those, of course, are for-
16 profit concerns, but we rely heavily on them. When
17 our government contracts with one of these private
18 prison companies, how is it that the government
19 determines what is a sufficient per diem rate in
20 order to insure that the detention conditions, that
21 the facility satisfies the current enforceable
22 standard?

23 MR. LANDY: Well, that is part of the
24 contract negotiation process. ICE has an Office of
25 Acquisitions which works with the ICE component,

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1 Enforcement Removal Operations [ERO]. It requests
2 jail cost statements and other information
3 regarding whatever the facility or contractor is
4 claiming its costs to be. Those are reviewed by the
5 Office of Acquisitions and other offices, also
6 including the Office of Chief Financial Officer.
7 There are often negotiations regarding the
8 reasonableness of the rate, and then a
9 determination on the final rate, which is typically
10 different than what was originally requested.

11 VICE CHAIR TIMMONS-GOODSON: Okay. So,
12 after that process is completed, is there any
13 monitoring to insure that the proportion of the
14 monies of the per diem rate is being allocated
15 toward services for the detainee and the overall
16 condition of the facility?

17 MR. LANDY: Well, there are actually a
18 number—several layers of oversight, which
19 specifically with respect to the contract, the
20 contract mechanism provides that there is a
21 contract officer representative on site responsible
22 for ensuring that all aspects of the contract are
23 complied with, not just detention standards, but
24 typically the contract has a number of other
25 provisions.

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1 In terms of compliance with the
2 detention standards themselves, I mentioned that
3 there are several different types of inspection
4 programs that ICE has, both the Office of Detention
5 Oversight, the annual contract—I'm sorry, the
6 annual inspections against standards by ERO, as
7 well as onsite detention monitors, which are placed
8 at a large number of our facilities, and those are
9 full time. So, those are full-time onsite monitors,
10 so there—it's rigorous oversight both for detention
11 standards compliance, but in the case of the
12 contractor officer representative, also they are
13 required to be checking the contractor's
14 performance against the requirements of the
15 contract itself.

16 CHAIRMAN CASTRO: Thank you, Vice Chair.
17 We'll close the questioning of this panel with our
18 Staff Director.

19 MS. SALLO: Good morning. Ms. Bena, in
20 reference to unaccompanied minors and the special
21 immigrant juvenile status capabilities, I know that
22 EOIR [Executive Office for Immigration Review] is
23 responsible for reviewing the CJS application and
24 also approving it to allow the child to remain in
25 foster care and in the United States, but it is the

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1 dependency court judge that has to insure upon
2 adjudication that the appropriate language is
3 included in the dependency order that will allow
4 for the CJS application to then be submitted for
5 review and approval? Are you aware of how many
6 unaccompanied minors have been found eligible for
7 CJS application, and if so, how could we get that
8 information?

9 MS. BENA: I don't know that
10 immediately, but I think that that will be pretty
11 easy for us to find out. And we may have to work
12 with our partners at DOJ and DHS. Are you looking
13 specifically for the state approvals, or are you
14 looking at the actual SIJ [Special Immigrant
15 Juvenile] application—

16 MS. SALLO: Really both, just to see how
17 many are actually being submitted in comparison to
18 the number of kids that are currently being taken
19 care of through the foster care system, and
20 ultimately to see the approval rate overall.

21 MS. BENA: Yes, I'm not as sure about
22 the state court approvals, how to gather that
23 information. Certainly, we can get the—

24 MS. SALLO: Right, because that can be
25 kind of secretive.

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1 MS. BENA: Right.

2 MS. SALLO: But sometimes, if it is
3 available anywhere, I would like to see that, to
4 see how many folks—because one of the concerns is
5 the training being provided to the dependency court
6 judges on a regular basis to insure that they
7 understand what factors should be considered, and
8 what type of protections can be provided.

9 MS. BENA: And I know there's a lot
10 underway on that. I know that—I think CIS was doing
11 a training for judges, and HHS is also. We just
12 started to put out regional ORR representatives, so
13 not specifically on the unaccompanied children, but
14 all of the kids that we work with, so we have
15 regional representatives out. And they're starting
16 to reach out to the state court judges.

17 MS. SALLO: Okay. Thank you very much.

18 CHAIRMAN CASTRO: Thank you to Panel I.
19 We appreciate it, and you're free to stay and
20 listen to the rest of the hearing today. We're
21 going to transition now from Panel I to Panel II,
22 so we ask our staff to come and change the name
23 plates, and ask members of Panel II to begin to
24 work your way up. We'll remain on the record, but
25 we'll start again in a couple of minutes.

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1 And our fourth and final panelist is
2 Ms. Karen T. Grisez of the American Bar
3 Association.

4 I want to ask you all to raise your
5 right hand and swear or affirm that the information
6 that you are about to provide us is true and
7 accurate to the best of your knowledge and belief.
8 Is that correct?

9 PANELISTS: (Affirmed)

10 CHAIRMAN CASTRO: Thank you. Mr. Conry,
11 you have the mic.

12 MR. CONRY: Thank you. Good morning,
13 Chairman Castro, Commissioners, and fellow
14 panelists. My name is Steven Conry and I am the
15 Vice President for Facility Operations at CCA.

16 In that role I oversee operational aspects of the
17 majority of our ICE facilities to include adherence
18 to the PBNDS and PREA standards, as well as other
19 requirements of our Government partners. I'm a
20 correction professional with over 30 years of
21 experience in both public and private correction
22 settings, the last nine of which I have worked for
23 CCA.

24 I'd like to start by thanking the
25 Commission for providing me the opportunity to

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1 share with you CCA's steadfast commitment to
2 protecting the civil rights and dignity of all
3 individuals entrusted to our care.

4 CCA commitment. As our statement
5 indicates, nothing is more important to our company
6 than the safety and welfare of those entrusted to
7 our care. It is a responsibility we take very
8 seriously and our company's efforts, which I'll be
9 speaking about today, reflect a thoughtful
10 commitment to uphold those values on a day-to-day
11 and hour-to-hour basis in our facilities. These
12 efforts are carried out in consultation with our
13 Government partners, who also provide strong and
14 direct oversight. I'll talk first about PREA and
15 then PBNDS.

16 PREA. CCA has established a zero
17 tolerance policy against all forms of sexual abuse
18 and sexual harassment. To enforce that policy, we
19 have adopted an aggressive plan to prevent, detect,
20 and respond to all allegations. Our plan entails a
21 focus on the preventions of incidents, a focus on
22 not just meeting, but exceeding our contractual
23 requirements and a focus on continued improvement
24 of our policies and practices. In the area of
25 prevention, our primary focus is to take all

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1 necessary actions to prevent the detainees in our
2 care from being sexually abused by another detainee
3 or by staff.

4 Let me discuss a few examples of our
5 prevention strategies. One: training of staff,
6 contractors and volunteers with solid policies and
7 practices.

8 Two: educating detainees through
9 orientation handouts, town hall meetings and one-
10 on-one counseling.

11 Three: screening detainees upon
12 admission for victim and/or predatory history, and
13 then using that information to house them
14 appropriately.

15 Four: installation and use of cameras
16 and recording devices.

17 Five: notification of law enforcement
18 of all sexual abuse allegations. There is no doubt
19 in a staff member's mind what will happen each and
20 every time an allegation is brought forward.

21 Cooperation with law enforcement and
22 district attorney staff to ensure a successful case
23 against perpetrators.

24 Seven: termination of staff who are
25 found at the CCA level to have sexually abused

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1 detainees. We do not wait for an arrest or
2 conviction.

3 In the area of exceeding contractual
4 requirements, the second focus area of our zero
5 tolerance policy against sexual abuse and
6 harassment is a commitment to exceed what our
7 Government partners demand from us in their
8 contracts.

9 Some examples of our above and beyond
10 practices include: the development of a PREA
11 Committee comprised of upper level professionals
12 who meet after each allegation of sexual abuse to
13 assist with the processing of the allegation and,
14 just as importantly, to ensure compliance with our
15 policy.

16 Next, CCA also established a PREA
17 hotline in each facility that allows inmates to
18 call into a dedicated hotline to report sexual
19 abuse incidents, alert staff about situations that
20 may be leading up to an assault, or to request help
21 for any reason.

22 Next, large relevant and eye-catching
23 signage in all detainee living areas that clearly
24 discusses sexual abuse in a straightforward manner
25 and ways to report it.

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1 Lastly, each facility receives an
2 unannounced audit every year, and this audit is
3 conducted by an independently managed CCA audit
4 team.

5 In the area of continual improvement,
6 our zero tolerance philosophy means that we
7 continually improve our practices and policies and
8 invest our capital in technology and other types of
9 equipment to give us the best opportunity to
10 prevent these incidents from occurring. CCA spends
11 millions of dollars installing and maintaining CCTV
12 [closed-circuit television] and recording systems
13 throughout our facilities. We also install mirrors,
14 signage—and signage so that vulnerable areas of the
15 physical plant can be viewed by staff more
16 effectively. We also have third-party review of our
17 policies, practices, and training plans.

18 Now I'd like to discuss the PBNDS
19 standards. In addition to our aggressive zero
20 tolerance approach to sexual abuse, our company
21 also incorporates PBNDS standards into the policies
22 and operational practices at every CCA facility
23 where these standards apply.

24 Facilities operating under PBS
25 standards are staffed by full-time ICE personnel

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1 and audited by independent experts contracted by
2 ICE. Applying the PBNDS standards consistently at
3 our facilities across the nation is of crucial
4 importance to: (1) protecting the safety, welfare,
5 dignity, and rights of the individuals entrusted to
6 our care; (2) meeting and exceeding the
7 expectations of our Government partners; and (3)
8 fulfilling our company's mission of mandating class
9 leading excellence in the services we deliver to
10 our partners.

11 To that end, we undertake internal
12 efforts to support the consistent and predictable
13 application of standards, CCA policies, procedures,
14 and operating practices. They include having
15 subject matter experts working at the corporate
16 level to coordinate the application of standards.
17 It will also include comprehensive operational
18 audits conducted by independent corporate-level
19 auditors on an annual basis, and ongoing,
20 standards-based self-monitoring by all of our
21 facilities.

22 In closing, I hope this information has
23 given you an understanding of our company's
24 commitment to protecting the safety, dignity,
25 welfare, and civil rights of every individual

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1 entrusted to our care as well as the actions we
2 take every day to fulfill that commitment.

3 I'd like to once again thank the
4 Commission for this opportunity.

5 CHAIRMAN CASTRO: Thank you, Mr. Conry.

6 Sister Pimentel?

7 SISTER PIMENTEL: Thank you. Thank you
8 for the invitation and thank you for you, because
9 hearing you and your questions let me know that
10 this country is a very nice country to be in. Thank
11 you.

12 CHAIRMAN CASTRO: Thank you.

13 SISTER PIMENTEL: The summer of 2014 the
14 Rio Grande Valley experienced overwhelming waves of
15 immigrants, as we all know, coming to our border.
16 No one expected great numbers of people to come.
17 Immediately we in Catholic Charities looked to see
18 how we could help.

19 The first wave of immigrants came in
20 June when we—we—we were trying to do something
21 about this. The community responded to help the
22 families who had been released to travel and had
23 been dropped off at the bus station in McAllen,
24 Texas. The immigrant families who had traveled
25 weeks, sometimes for over a month on the journey

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1 north to safe haven experienced all kinds of
2 hardships and abuse, emotional and physical
3 injuries along the way, themselves in dire need of
4 immediate care when they were dropped off at the
5 bus station.

6 Through the generosity and compassion
7 of many, we were able to provide for their
8 immediate basic needs. A warm meal, shower,
9 toiletries, clean clothes, shoes, warm jacket and a
10 blanket, and anything else they might need. We also
11 provided them with food, drink for the next leg of
12 their journey as they traveled to connect with
13 relatives in different states throughout the United
14 States. Many of them had to travel for several days
15 and had no money with them, so we were able to give
16 them that.

17 Thanks to the City of McAllen, the city
18 government, mobile showers were set up on the
19 premises. It is amazing to see the faces of the
20 families as—after they had the opportunity to
21 shower. It was beautiful to see that.

22 Most importantly, we helped restore the
23 dignity and respect every human person deserves.
24 Families walking into our Humanitarian Respite
25 Center at the Sacred Heart Church in McAllen,

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1 Texas, are welcomed with joyful applauses, smiles
2 and greetings the-with-from volunteers who shout
3 out "bienvenidos," which means "welcome." The
4 welcome alone begins the transformation of
5 restoring the dignity of these people, the
6 families, the mothers and the children. They're
7 moved to tears when they're welcomed.

8 The community of the Rio Grande Valley
9 spearheaded by the Catholic Charities are
10 continuing and will continue to help those who are
11 allowed to travel. Some days there are more and
12 some days there are less individuals that we care
13 for. To date, more than 16,000 refugees have been
14 helped from 13 different countries, the majority
15 from Central America, from Honduras, Guatemala and
16 El Salvador.

17 At the beginning of June, we were
18 helping more than 200 individuals each day. While
19 the numbers have dropped significantly, there are
20 days when we receive close to 100 people today and
21 some days the numbers are lower. The numbers we help
22 depend on the availability of space in the new
23 holding detention facilities at Karnes City and
24 Dilley, Texas. For the most part, families are
25 detained and kept in these facilities rather than

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1 being immediately released to travel.

2 Among the overwhelming waves of
3 immigrants are thousands of unaccompanied children.
4 These children were not released like the family
5 units. Instead, they were kept in border patrol
6 processing centers that became holding facilities
7 until the proper up-to-code facility for
8 unaccompanied children became available. In the
9 early months of this year's wave of immigrants, the
10 Border Patrol did—did not have a choice other than
11 to keep the children detained for days, if not
12 weeks, until the facility for unaccompanied
13 children became available.

14 I visited the facility in McAllen,
15 Texas, where great numbers of children were
16 detained in those early months. My experience
17 visiting that center was heartbreaking. It was very
18 sad to see hundreds, if not thousands, of children
19 of very young ages detained in great numbers in
20 small cells. The children's faces looking through
21 large glass windows, all with tearful eyes, dirty
22 and sad, traumatized. All I could think about was
23 what it must have been like for them to make such a
24 long difficult journey north without the care and
25 comfort of a family member.

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1 And then to imagine how these children
2 feel, they're being detain under these conditions,
3 packed up like little sardines with no space to
4 even breathe. I recall a child begging me, "sácame
5 de aqui. No puedo respirar." Please take me out of
6 here. I can't breathe. Seeing that child's face I
7 can only imagine how scared and frightened they all
8 were.

9 The children gathered around me, their
10 faces full of tears, and I invited them to pray
11 with me, and they did. Together we joined in one
12 prayer. It was a powerful experience, so moving
13 that even the officers who were witnessing the
14 children's response commented as I walked out the
15 cell, thank you for helping me see that they are
16 human beings. Yes, they are children.

17 It is evident that the Border Patrol
18 were not prepared to respond to the overwhelming
19 numbers of people who crossed the border into the
20 United States. The process and facilities were not
21 adequately equipped to handle the great number of
22 immigrants who kept arriving. Unfortunately, the
23 Border Patrol were not given any other option but
24 to detain these children under these conditions.
25 They did not have the proper facility space,

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1 personnel to handle the numbers of children.

2 Border patrol facilities became holding
3 facilities by default, but these facilities were
4 not equipped to care for the children. They said
5 they were doing their best, but unfortunately for
6 the children it was not enough. The children needed
7 care and attention the Border Patrol could not
8 provide. Fortunately, a new facility
9 for children was eventually opened, but it took
10 several months for the Border Patrol to come up
11 with this adequate response to care for the
12 children. The fact is in those few first months
13 this summer there was no other option than to care
14 for the children at these small Border Patrol
15 processing centers. It should not have been this
16 way. A child should not have to experience this
17 type of hardship at any time.

18 I am happy to say the response from
19 officials of the Border Patrol to my initial visit
20 to the Border Patrol site has been great. Border
21 Patrol agents became extremely cooperative in
22 working with Catholic Charities to meet the needs
23 of the families released from detention. They'd
24 notify us as to how many are being released so that
25 we can appropriately prepare and respond to them.

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1 They are open to listen and to help to improve
2 situation at hand. And—and I do have some
3 recommendations for consideration.

4 CHAIRMAN CASTRO: Thank you, sister.
5 No, we can get into the recommendations when we
6 question you. Thank you.

7 Ms. Hinojosa?

8 MS. HINOJOSA: Thank you very much for
9 asking me to speak today. As someone who chose to
10 become an American citizen, this is kind of like,
11 wow, the highlight of my career. So thank you so
12 much.

13 I'm going to speak to you about what I
14 saw when I was reporting on my PBS *FRONTLINE*, "Lost
15 in Detention," during the year-long process of 2010
16 to 2011, and I want the record to reflect that I
17 have a new version of my—of my speech, so please
18 let that be the one that's included.

19 One of the first meetings that we had
20 to discuss the conditions of detention was with
21 Dora Schriro, then New York City Commissioner of
22 Corrections, formerly at DHS. While at Department
23 of Homeland Security, Schriro had taken on an
24 internal review of the detention facilities now
25 sprouting up in many states almost overnight. Her

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1 concern was with oversight, specifically of the
2 conditions with detention. She was intrigued by
3 what she had seen when as Commissioner of
4 Corrections in Arizona, she went to visit some
5 detention centers there. And as somebody who has a
6 Ph.D. in corrections, she wanted to know about
7 oversight.

8 So as a journalist, the most important
9 tools that I have in my toolbox are actually my
10 eyes and ears. The only way that I can tell these
11 stories is to actually have access, and one of the
12 biggest hindrances to reporting on this story for
13 all journalists, as well as myself, has been access
14 to report on immigrants in detention, to have
15 access to these detention facilities, both
16 Government-run and private-run.

17 Anyway, in her research, Dora Schriro
18 told me that she had uncovered several troubling
19 pieces of information. The detainees were often
20 being housed without any clear sense of
21 requirements, legal requirements for their care.
22 Many of the detention facilities had troubling
23 conditions, but one in particular stood out, the
24 Willacy Detention Facility in Raymondville, Texas.

25 After her visit to Willacy, Schriro

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1 requested questionnaires from all detainees to
2 understand how they saw the conditions of their
3 detention. She also asked all of the detainees to
4 have their weight checked. She was concerned
5 because of how skinny they looked. If they were not
6 feeding the detainees, she thought, what else could
7 be going on? Later it was discovered that at least
8 10 pounds had been lost per detainee.

9 We began to search out people who had
10 been housed in Willacy, and we spoke to one young
11 woman, Maria, who after having been released
12 already more than six months, was very specific in
13 her complaints. The food was cold, often spoiled.
14 Bologna sandwiches over and over.

15 A strong sense of specificity in her
16 complaints. The women were given just one sanitary
17 pad per day. Was not enough. When they ran out of
18 toilet paper, they were just told to soil their
19 undergarments. They weren't allowed access to a
20 water fountain.

21 She spoke about the temperature, how
22 cold. It was either cold or too hot. The structure
23 had no windows, no way to look outside. The one
24 window that there was, it was kind of like a circus
25 tent structure. The one window it—that there was

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1 there was a red line around it so you couldn't get
2 close to the window and you were punished if you
3 did.

4 There's a lot of shame in these
5 stories, so getting them to talk to us on camera
6 was very difficult. One woman reported being
7 assaulted, sexually assaulted at Willacy, and when
8 she asked another officer what she should do about
9 this, that officer said the safest thing you could
10 do would be to keep quiet.

11 We spoke to a former guard who said
12 that she had witnessed another guard and a
13 supervisor beating a detainee who had answered back
14 to an insulting guard. She was told to take the
15 badly injured man and put him on the first plane
16 back to—deported to Guatemala. She soon quit
17 afterwards because of an unsafe work environment.

18 We also spoke with André, who spoke of
19 another trend that we had heard about, which was
20 the over-medication of detainees as a way to keep
21 them sedated. He was over-medicated, claimed to be—
22 was asleep for 36 hours, fell off his top bunk,
23 fell on his face, broke his eye socket and ruptured
24 a testicle and soon after was released.

25 When we did get inside to Willacy, what

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1 I saw, although I was--this was kind of disturbing.
2 I was-- we were told that if we were to speak to any
3 detainee, we would be immediately escorted off the
4 premises. So as a journalist it was immediately--
5 immediately felt like a muzzle, and I don't
6 understand that when we're supposed to have access
7 and have the best interest of everyone who's in our
8 country.

9 Once I was there I saw, you know,
10 bologna sandwiches, canned fruit and beans. Most of
11 the people were just keeping their heads down. I
12 saw the tents. I saw the windows with the red line
13 around it. I saw a complaint box that was nailed
14 shut so you couldn't actually put a complaint
15 inside. One of our whistleblowers who we
16 interviewed soon after our visit to Willacy
17 confirmed that she had been told about eight rapes
18 that had occurred. She had--actually also a detainee
19 had come to her and shown her the food that they
20 were eating, and when the food opened up in a
21 napkin in her--this person's hand, there were live
22 maggots. And this is what they had been served.

23 I wish I could sit here and tell you
24 that--so in the years--because we ran this *FRONTLINE*
25 several years ago, that after all of that

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1 reporting, and it being quoted and cited on the
2 Senate floor, that things had actually changed. And
3 unfortunately, just on the celebration of Martin
4 Luther King's birthday a couple of weeks ago, I was
5 in the Bronx reporting for *Latino USA*, and there we
6 met three separate women from Honduras who didn't
7 come together, who are now in the Bronx. And they
8 told me that they were held in a place that's
9 commonly called (Foreign language spoken), which
10 means "the ice box" or "the freezer." She said that
11 they were hold-held wet and cold with no blankets,
12 that the guards joked with them to not ask for any
13 more air-conditioning, taunting them about the very
14 cold conditions. They said they got three
15 microwaved burritos. Often they are still frozen
16 and that the water tasted like sulfur.

17 As a reporter, ~~I-I~~ I like to get the
18 last-minute information, so as a matter of fact,
19 walking into this building I spoke to the first
20 immigrant I saw and I said, what can you tell me
21 about what you know about the conditions in
22 detention? And she said-she didn't want to because
23 this is a very shameful thing, but then she said,
24 well, this is what I've heard today. They are cold,
25 they are hungry, they are scared, they are fed

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1 rotten food, food for dogs. Kids are made to sleep
2 on cement beds. They are treated like animals.
3 They're made to feel like they're not humans.
4 That's just this morning. Thank you very
5 much for this honor.

6 CHAIRMAN CASTRO: Thank you. Ms.
7 "Grisez"? I hope I'm pronouncing your name right. I
8 apologize if I'm not.

9 MS. GRISEZ: Good morning, Chairman
10 Castro and other members of this Commission. On
11 behalf of the American Bar Association I'd like to
12 thank members of the Commission for the opportunity
13 to share our views on several important issues as a
14 part of this hearing.

15 My name is Karen Grisez. I serve as a
16 special advisor to the ABA Commission on
17 Immigration, and I was formerly chair of that body.
18 I want to be clear on the introduction that I'm not
19 an employee of the ABA. I don't work for the ABA.
20 My association with the ABA is in a voluntary
21 leadership capacity. I'm an-a lawyer here working
22 in Washington, DC.

23 CHAIRMAN CASTRO: Thank you.

24 MS. GRISEZ: With the recent influx of
25 families and unaccompanied children from Central

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1 America and the renewed emphasis on family
2 detention, along with the historically high rates
3 of immigration detention in general, there is a
4 serious need to evaluate the U.S.' system of
5 immigration detention and the deleterious effects
6 it has on individuals and families.

7 The Commission has my written testimony
8 for the record. What I hope to do this morning is
9 highlight a few things out of the written testimony
10 and then respond also to some of the questions and
11 issues that have arisen this morning.

12 The ABA of course is a--has 400,000
13 members. It's the largest voluntary bar association
14 in the United States and one of the largest
15 voluntary professional organizations in the world.
16 The Commission on Immigration--and I'll--I'll try to
17 be clear which commission I'm speaking of --

18 CHAIRMAN CASTRO: Thank you.

19 MS. GRISEZ:--when I use that term. The
20 Commission on Immigration coordinates the ABA's
21 efforts to help ensure fair treatment and due
22 process rights for all immigrants and refugees in
23 the U.S. That work takes the form of policy
24 advocacy, educational programming, and operating
25 pro bono and direct representation programs with a

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1 special emphasis on the needs of the most
2 vulnerable.

3 Immigration detention is particularly
4 important to the ABA for two reasons: One is that
5 it impedes the access to counsel, and without the
6 right to appointed counsel, as was mentioned
7 earlier this morning, the fact of generally remote
8 detention locations, much less the conditions that
9 pertain in those facilities, make it extremely
10 difficult for people to access pro bono
11 representation. It's particularly hard for pro se,
12 unrepresented people to vindicate their own claims.
13 Imagine being in a detention center and not
14 speaking English and trying to meet the burdens of
15 coming forward with corroborative evidence
16 translated into English for your hearings if you're
17 not able to have a lawyer.

18 Additionally, for both represented
19 people and pro se people, prolonged detention has a
20 serious psychological impact on detainees and often
21 causes them to abandon meritorious claims because
22 they're just unable to tolerate that prolonged
23 detention regardless of the strength of their case.
24 And that's particularly true for vulnerable
25 populations like asylum seekers, other traumatized

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1 people, and those with mental health problems.

2 I want to just make one point here. I
3 was part of an ABA delegation that toured the
4 toured the children's facility at Lackland Air
5 Force Base, and what we saw there was an amazing
6 attempt, I would say, of the employees in that
7 facility to provide the children with good care.
8 There were colorful classrooms. There was great
9 health care. They had a nice new soccer field. They
10 were coming in the afternoon break when school time
11 ended with a tray full of colorful snow cones.

12 But I was left struck with, here, how
13 hard they are trying to serve the needs of the
14 kids, but the legal services are purely voluntary
15 and by—you know, by volunteer organizations coming
16 in. And if children don't have access to counsel to
17 vindicate their claims, and the UNHCR estimate is
18 half of the children may be eligible for relief,
19 all the snow cones in the world can't help them
20 establish their eligibility to stay. So I think
21 that illustrates the access to counsel issues.

22 Two of the Commission on Immigration's
23 projects are particularly relevant for this
24 briefing. One is the Detention Standards
25 Implementation Initiative [DSII] and the other is

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1 the detainee hotline. The Commission on Immigration
2 was intimately involved in the creation of the
3 detention standards, the three iterations that
4 you've heard of today, the 2008—sorry, 2000
5 initially and then the 2008 and 2011 performance-
6 based national detention standards.

7 Through the DSII project, the
8 Commission assembles volunteer delegations that go
9 in and tour the facilities and observe and make
10 reports to ICE on adherence to the applicable
11 standards. Those reports are posted on the ICE
12 website. Others are FOIA-able. The Commission on
13 Immigration, pursuant to its agreement with ICE,
14 cannot share them directly with this Commission.
15 But those have been a great source of information
16 about the implementation of the standards. And I
17 can say that none of them have received a perfect
18 review, and all of those DSII visit reports have
19 revealed one or more lack of adherence to the
20 standards.

21 The detainee hotline is a number that's
22 pre-programmed into the detainees' telephones so
23 that they can call directly to the Commission on
24 Immigration in Washington, DC. We get 300 to 400
25 calls a month on that line, separate individual

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1 calls. Many of them are asking for legal
2 information or help with their cases. Others are
3 presenting complaints that have to do with—although
4 they may not be characterized as violations of the
5 standards, they are condition complaints that
6 implicated potential lack of compliance with the
7 standards.

8 Part of those visits, too, I'll say, is
9 reviewing detainee handbooks and other materials.
10 And what we've noticed, and this relates to a
11 problem that was brought up before about the
12 various types of facilities, the detainee handbooks
13 are often the same handbooks as are used in a state
14 and county jail criminal facility. So the handbooks
15 that are given to the detainees don't often comport
16 with the standards. And that's the document that
17 the detainees get that tell them what their rights
18 are.

19 I'm going to try to skip ahead.
20 Religious complaints were mentioned. There's a
21 whole list in my written testimony of most common
22 complaints. Religious complaints are one of them,
23 and that's particularly for persons who are not of
24 the Christian or Jewish faiths.

25 We urge enforceability of the detention

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1 standards as a-an appropriate reform. The ABA
2 opposes all immigration detention except in the
3 most extraordinary circumstances where public
4 safety, national security, or flight risk are an
5 issues.

6 There was a question about humane
7 alternatives earlier, and appearance rates, which
8 I'd be happy to address. I think I have some other
9 things I can say in answers to questions, but I'll
10 end by saying I've brought with me reports that are
11 available online that the ABA did in 2010 with a
12 number of recommendations for reforms of the
13 immigration adjudication system. One big section is
14 about what drives detention. Who needs to be
15 detained and why. There are recommendations for
16 reform there.

17 And I've also brought a booklet that
18 our-the ABA's civil immigration standards. These
19 were adopted by the ABA in 2012, August 2012, as
20 ideal standards. They are not the applicable
21 performance-based standards, but ones that we offer
22 to the Commission for its consideration.

23 CHAIRMAN CASTRO: Thank you, Ms. Grisez.
24 Appreciate it.

25 I will call on Commissioners, but

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1 again, I will take a Chairman's prerogative to ask
2 the first set of questions.

3 And first of all, just generally, I am
4 shocked to hear the consistency among different
5 facilities we talked about today, the kind of
6 abuse, sexual and otherwise, that's occurring.
7 There does not seem to be an isolated incident.
8 What you described, Ms. Hinojosa, is similar, if
9 not identical, to what we saw in the complaint from
10 NIJC and the ACLU, what sister saw, and what
11 happens in other facilities we've gotten reports
12 of. So, to me that says there's clearly a culture
13 of this going on.

14 And I know that our federal officials
15 are still here, even though they're not on the
16 panel, and I just want to say there's a great
17 concern that this seems to be a culture of the
18 agencies, at both—maybe not only the federal ones,
19 but the contracted ones, because Willacy, in my
20 understanding, is a CCA facility. No? Not anymore?
21 It was at some point? Not ever? Okay.

22 It's listed on the Website as being one.

23 MR. CONRY: We—we run a—another facility
24 in Willacy that is not an ICE detention facility.

25 CHAIRMAN CASTRO: Okay. You got to turn

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1 your mic on, please, Mr. Conry.

2 MR. CONRY: The facility we do run in
3 Willacy is not an ICE facility. It is a state
4 facility that's contracted with the-

5 CHAIRMAN CASTRO: Okay.

6 MR. CONRY:--Texas Department of Criminal
7 Justice.

8 CHAIRMAN CASTRO: All right. Thank you
9 for clarifying that for me.

10 First of all, Mr. Conry, I want to
11 thank you for being here. I appreciate your company
12 participating voluntarily today. We also wanted to
13 have The Geo Group here, which is another privately
14 run prison company, and they refused to be here.
15 I'm going to consider whether I ask my colleagues
16 to reopen this hearing at some point. So I have to
17 subpoena them to come. But I didn't have to do that
18 for you, and I appreciate very much your
19 participation today voluntarily.

20 I do have a number of questions,
21 however, regarding how your company functions and
22 some of the issues that may relate to how your
23 company manages detention facilities.

24 In particular, I'm surprised that
25 despite the fact that President Obama recently

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1 announced in his executive action that we're not
2 going to be deporting more folks, that in the wake
3 of that, there's still an RFP out there asking for
4 more federal beds. How does your company determine
5 through its business plan how many beds it's going
6 to seek from federal agencies to handle immigration
7 detainees? How do you determine what you're going
8 to go after in terms of the number of beds?

9 MR. CONRY: Chairman, we use a process
10 that—that starts actually with the RFP, so we don't
11 determine ahead of time what the need is going to
12 be. We respond to RFPs and determine each time an
13 RFP is put out for response whether that is a
14 proposal that we'd like to submit a response to and
15 whether it's appropriate based on our business
16 model and our skill set.

17 CHAIRMAN CASTRO: When you respond to an
18 RFP, or ultimately or when you enter into a
19 contract with the Federal Government on the
20 immigration detention centers, do you specify—does
21 your company require that the detainees be a
22 certain age or certain health?

23 MR. CONRY: No, sir. We respond to the
24 RFP and respond in a way that alerts the ICE agency
25 whether or not we can achieve the mission that the

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1 RFP is addressing. So many times we would look at
2 an opportunity and if, for instance, we can't reach
3 the level of-of the mission they would like, then
4 we state that in our response. So-

5 CHAIRMAN CASTRO: So then you don't
6 limit the age or health of any of the detainees
7 that you receive as part of your contracts?

8 MR. CONRY: No.

9 CHAIRMAN CASTRO: Okay. Does your
10 company benefit from selling prisoners labor time?

11 MR. CONRY: No, we do not.

12 CHAIRMAN CASTRO: No? Do you know of
13 other for-profit prison companies that do that?

14 MR. CONRY: No, I do not.

15 CHAIRMAN CASTRO: No. As we're looking
16 at the various complaints; for example, the ones I
17 handed this morning to Ms. Mack from the Stewart
18 facility involving the religious freedom issues
19 raised by the American-Arab Anti-Discrimination
20 Committee, as well as information we've obtained
21 from reports such as the detention report filed by
22 the ACLU of Georgia, both of those, for example,
23 implicate some issues regarding the Stewart
24 detention facility. And I believe that is a CCA
25 facility, is that right?

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1 MR. CONRY: That is correct.

2 CHAIRMAN CASTRO: And are you familiar
3 with any of those issues that I talked about in
4 terms of the religious liberties questions raised
5 by the Arab-American community in Stewart or any of
6 the issues raised by the ACLU of Georgia?

7 MR. CONRY: Yes, I am. I'd first like to
8 say that CCA takes the matter of religious freedom
9 very seriously and we believe it's a fundamental
10 right. And every time an allegation is brought up,
11 or a complaint, regarding a specific detainee and
12 their access to religious services or religious
13 articles, it's taken very seriously. Almost in
14 every example it's brought to the level of a
15 corporate-level person such as myself to ensure
16 that the matter is looked into and rectified if it
17 actually is found to be substantiated.

18 I cannot speak to any specific matter
19 except to say that all religions are respected, and
20 access to all religious articles, services,
21 celebrations are complied with, and staff actually
22 very much enjoy participating and making sure that
23 those services are provided. So, in respect to say
24 the Muslim faith, we fully comply with all the
25 surrounding weekly services like a Jum'ah and

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1 annual events like Ramadan services. The--the food
2 service things we have to do to comply with those,
3 those are all fully familiar to our staff in all of
4 our facilities regardless of the number of Muslims
5 that are in those facilities.

6 CHAIRMAN CASTRO: Earlier I gave a copy
7 of those reports to the Office of Homeland Security
8 and asked them to look into it further and provide
9 us with a comment, each of those matters. I would
10 like to provide you with a copy of those same
11 complaints and ask the same of you and your
12 company, if you could respond to us specifically as
13 to those issues and allegations therein. Would you
14 do that?

15 MR. CONRY: Yes.

16 CHAIRMAN CASTRO: Thank you. The final
17 question I have for you, then I'll open it up to my
18 colleagues, is, in your written statement to us you
19 talk about CCA conducting audits of its various
20 facilities to ensure that there's compliance with
21 the various responsibilities that you have in terms
22 of providing further rights and care of the
23 individuals in your custody. Unless I read it
24 wrong, I was not able to determine what the results
25 of those audits were. We would like to see those

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1 audits and would like—have you produce those to us.
2 Would you be willing to do so?

3 MR. CONRY: I'm unable to commit to
4 that. I can bring that back to our—our legal
5 department and our partner, ICE, to determine what
6 we can hand over or not.

7 CHAIRMAN CASTRO: What's the concern?

8 MR. CONRY: Well, many times there are
9 contractual requirements that require us to funnel
10 those through our Government partner in response to
11 any request for information regarding anything that
12 goes on within that facility.

13 CHAIRMAN CASTRO: Would you let us know
14 before the 30 days expired of our keeping this
15 record open, whether or not you can do that?

16 MR. CONRY: Yes, I will.

17 CHAIRMAN CASTRO: So then, we could look
18 at other methods by which we can obtain that
19 information. It is extremely relevant to our
20 inquiry here.

21 Do you have any personal knowledge of
22 any of those audits?

23 MR. CONRY: Yes, Mr. Chairman, I am very
24 proud of the way our company conducts those audits,
25 and there are many ways in which we audit our

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1 facilities on an ongoing basis, first of which is
2 we expect and know for a fact that our individual
3 facilities are providing self-monitoring themselves
4 of the conditions going on at the facility. That's
5 the first level. And they do that on an ongoing
6 basis.

7 Secondly, we have an internal audit
8 unit comprised of experts that work for the general
9 counsel. They do not work for the operational arm
10 of CCA. They do unannounced audits each year to
11 determine compliance with not only the contract,
12 but with the various standards that each contract
13 covers such as the PBNDS, the PREA standards, ACA
14 standards, and—and so on. So those are very
15 detailed audits. Over 1,500 individual indicators
16 are looked at each year when they come through. So
17 we're very proud of those, and those are the things
18 that help us stay in compliance with our contract
19 and with these standards.

20 CHAIRMAN CASTRO: Good. Hopefully that
21 pride will result in your willing to share that
22 with us then.

23 What was your company's profit last
24 year from immigration detention facilities
25 business?

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1 MR. CONRY: I'm sorry, I'm an
2 operational person and I don't have access to that
3 data.

4 CHAIRMAN CASTRO: Okay. Thank you. I
5 will now turn it over to Commissioner Achtenberg.

6 COMMISSIONER ACHTENBERG: Thank you, Mr.
7 Chairman. Sort of consistent with that series of
8 document production requests, I was wondering
9 whether or not you would be willing to share with
10 the Commission your zero tolerance policy against
11 all forms of sexual abuse and sexual harassment
12 that you made reference to either in your written
13 testimony or in your testimony before us today. You
14 also made reference to the fact that you had an
15 aggressive plan to prevent, detect, and respond to
16 allegations of conduct that fall into those
17 categories. And we'd surely like to see that
18 additionally.

19 So I'll list the documents that I'd
20 love for the Commission to be able to review and
21 then you can tell me whether or not you think they
22 might be forthcoming. Your human rights policy and
23 the comprehensive policies that you referred to
24 that protect residents' legal rights. Your staff
25 training materials, whatever elements of that you

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1 can make available to us. The documents that
2 demonstrate the compliance with the PBNDS, and
3 perhaps that might be contained in the audits that
4 referred to—I'm not sure. But whatever would
5 demonstrate the level of compliance. Actually, I
6 think those would be of greatest interest. Does it
7 sound like those are things that we might find
8 forthcoming?

9 MR. CONRY: Commissioner, I'm happy to
10 say that some of the things on the list that you
11 talked about are actually available publicly on our
12 Website. So our human rights policy and statement
13 are there, as well as our policy on PREA. So, those
14 elements can be found on our Website.

15 In addition to that, my colleague is
16 copying down what you've requested. Some of that is
17 likely to be proprietary information, but again,
18 would have to go through our contracting agency,
19 ICE, for approval for release. And—and—and that—
20 that is—those that are truly proprietary might—we
21 might not be able to provide those, but we will get
22 back to you and alert you to our intent.

23 COMMISSIONER ACHTENBERG: Okay. That
24 would be great. Thanks very much.

25 CHAIRMAN CASTRO: Commissioner Yaki?

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1 COMMISSIONER YAKI: Thank you very much,
2 Mr. Chair.

3 This is also directed at Mr. Conry. And
4 again, thank you very much for appearing. I'm very
5 disappointed that The Geo Group chose not to
6 appear. I mean, there are a lot of questions I want
7 to ask you that deal with stuff in the past, but
8 I'd rather, I think, say I'm going to focus on the
9 future.

10 CCA has built a facility in Dilley,
11 Texas, for the purposes of housing immigrant
12 detainees, correct?

13 MR. CONRY: Correct.

14 COMMISSIONER YAKI: And it's going to be
15 approximately 2,400 beds?

16 MR. CONRY: Correct.

17 COMMISSIONER YAKI: About how many
18 people are in there right now would you say?

19 MR. CONRY: As of a day or two ago, the-
20 the number was about 385.

21 COMMISSIONER YAKI: But the idea for
22 this is that it was built in anticipation of a
23 possible second surge beginning this spring or
24 summer. Is that basically correct?

25 MR. CONRY: CCA really doesn't get

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1 involved in trying to understand what the precedent
2 is to the use of our beds. We reply to an RFP. In
3 that RFP, there is a certain number of beds that is
4 listed. And then we go forth with a plan to build
5 those beds and then provide the services around
6 that number of beds.

7 COMMISSIONER YAKI: All right. Now
8 Dilley is about an hour away from which major
9 cities? Laredo?

10 MR. CONRY: San Antonio—

11 COMMISSIONER YAKI: San Antonio?

12 MR. CONRY:—and Laredo in each
13 direction, north and south.

14 COMMISSIONER YAKI: So it's right smack
15 in the middle? Has CCA—and again, I'm trying to
16 look prospectively. There's a lot of stuff we could
17 talk—we could talk about Don Hutto's closure. We
18 could talk about a lot of things. But I'd rather—
19 because you chose to be here, I want to focus again
20 on the positive and the perspective.

21 I heard in your testimony you talk
22 about you called a regular meeting with
23 stakeholders. I do know that at least there's one
24 news account initially about concerns about the
25 travel time, about some of the conditions at the

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1 jail, like I guess the way it appears jail-like to
2 some of these folks who are coming in here and
3 escaping from these types—same kind of conditions
4 in other countries.

5 So I guess my question is, to what
6 extent has CCA engaged with stakeholders in the
7 Dilley, in the San Antonio-Laredo area to start
8 talking about dealing with a potential population
9 surge and what it would mean in terms of how to
10 deal—adequate translation services, adequate
11 knowledge by staff about how to deal with special
12 language needs, the needs of families, some of the
13 cultural competency that I talked about earlier
14 with regard to Homeland Security? Do you have
15 anything in place that engages the very activist
16 community, including some of the folks who are here
17 around you right now, in order to best deal with
18 this population?

19 Because if I understand it correctly,
20 and I believe I do, these people are not prisoners.
21 They are detainees. They are awaiting adjudication
22 of their cases before—through the United States
23 Immigration Customs Service for the purposes of
24 being able to possibly stay in this country, but
25 they have not committed crimes. They are here for

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1 whatever reason.

2 So that being the case, I think it's
3 incumbent upon a company such as you to try and
4 work with stakeholder communities much more so than
5 perhaps you have or been asked to in the past.
6 Because I think this could be a model. To the
7 extent that—I'm against the mandatory bed thing.
8 Let me put that out there. But to the extent that
9 is a fact of life, to the extent that the fact of
10 life is that you will be getting many people
11 possibly in your facility, tell me about what you
12 would plan to do, or perhaps would like to do, or
13 should do with regard to the stakeholders in your
14 area to be as good a custodian, as it were, for
15 these people.

16 MR. CONRY: I think that is a great
17 question and line of questioning, Commissioner.
18 These are the very things that we've been working
19 on from the very day we started putting our
20 proposal together for the operation of the South
21 Texas Family Residential Center. We have worked
22 days, nights, weekends, holidays making sure that
23 our plan and ICE's plan for that facility meets and
24 exceeds all the various—not only the standards, but
25 the lessons learned.

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1 So, let me first talk about the
2 standards. So, our contract requires compliance
3 with the FRS, Family Residential Standards. In
4 those standards, you will find all those things
5 that you just talked about, whether it's
6 translational services, appropriate menus, all
7 those things have been contemplated and included in
8 the FRS. But in addition to compliance with the
9 FRS, that's kind of hard-coded into the contract,
10 but there are also other things that we did. We had
11 a-a session called "Lessons Learned" that we sat
12 with our ICE partner and went through the various
13 challenges that they have experienced in the past
14 so they're not repeated in the future at STFRC.

15 So, I think those are two very good
16 examples of what we're trying to do. We want to be
17 successful in the operation of our Dilley facility,
18 as does our partner ICE. And we've taken great care
19 as we plan to open the 2,400-bed side of the
20 facility, and also in our current operation of the
21 first portion of the facility that's open.

22 COMMISSIONER YAKI: Can I ask you, then,
23 if you're willing to commit to meet with many of
24 the people who are here? They may be testifying at
25 the panel behind you. Some of them are on the panel

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1 with you right now. But may I ask for a commitment
2 from you to meet with them individually or as a
3 group to start talking about this before the spring
4 hits?

5 Because my concern is having—and I have
6 unfortunately a pretty good detailed knowledge
7 about how the U.S. prison system worked. I worked
8 on the Prison Project when I was in law school.
9 I've done a lot of work in this area. Standards are
10 one thing, but they're all minimal standards and
11 they're aimed at frequently a population control,
12 so to speak, and the idea that these people are not
13 supposed to escape and cause violence, what have
14 you.

15 But again, we're talking about a
16 different population here. We're talking about
17 families. We're talking about people who may have
18 the opportunity to live here, to work here, to seek
19 asylum here. They are a different kettle of fish,
20 as it were, and I think they demand a higher
21 standard of care and diligence. Not that all
22 prisoners don't, but I think for these folks,
23 especially the way that it's laid out, the way
24 that—play areas for children, all those sorts of
25 little things that normally don't go into the mind

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1 of someone who has done most of their work in terms
2 of building prisons. This is a special
3 circumstance.

4 I think it's a unique test of the
5 ability of both the Federal Government and of your
6 company to work together to proactively address a
7 lot of the problems that we have talked about here
8 today. And I think in here in this room are people
9 who can help you do that. And I would ask for you
10 to commit to meet with them and to work with them
11 now and in the future to make sure that, going
12 forward, you have the kind of facility that you can
13 come back to here or to Congress and say this is
14 how we can make it work.

15 MR. CONRY: I have two responses,
16 Commissioner. One is that, relative to our
17 contract, we would have to gain ICE's approval to
18 meet with these other groups if we are going to
19 discuss operation of ICE detention. So that's-
20 that's the first response.

21 But let me also assure you-

22 COMMISSIONER YAKI: Let me ask you then
23 why is that? Why is that?

24 MR. CONRY: It's in the contract, sir.

25 COMMISSIONER YAKI: But a contract just

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1 is minimum standards. Why can't-

2 MR. CONRY: No.

3 COMMISSIONER YAKI:--you meet with them
4 to talk about other sorts of things? Food. Menu,
5 for example. I mean, when you say appropriate menu,
6 what you may think is an appropriate menu may have
7 no relationship whatsoever to what these
8 individuals may be used to. I mean, why is it that
9 you have to get permission for--and good thing Mr.
10 Landy has taken off. I guess I don't get that at
11 all.

12 CHAIRMAN CASTRO: And after this
13 question, Commissioner Yaki, I'm going to go
14 Commissioner Heriot.

15 MR. CONRY: I'm not sure why the
16 contract calls for that, but any time we get a
17 request for information to discuss operations of
18 the facility or a prospective facility, that needs
19 to get clearance from ICE.

20 And the other thing I wanted to say in
21 response to your question is that many people would
22 be surprised. I'm a 30-year veteran. I've seen many
23 sets of standards. You're right, sometimes they are
24 built kind of on the minimum side. Anybody I think
25 who's reasonable who reads the Family Residential

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1 Standards will see that they are developed for this
2 unique population, you know, including, you know,
3 snacks for children, all sorts of ratios of service
4 providers to children.

5 And also alert you to the fact that
6 we've already had a large number of NGOs out to the
7 facility, media out to the facility, and they have
8 all come back with very favorable impressions of
9 the services we're providing to this unique
10 population, whether it's our delivery of
11 educational services, recreational opportunities,
12 our dining service. We've already got very positive
13 feedback from those -- (Simultaneous
14 speaking)

15 COMMISSIONER YAKI: And in the spirit of
16 the question that the Chair had asked earlier, may
17 we come down and visit your facility?

18 MR. CONRY: Again, that's something
19 you'll have to speak to ICE about, but we have seen
20 plenty of folks come through already in this early
21 day.

22 COMMISSIONER YAKI: Okay.

23 MR. CONRY: We're—we're roughly about
24 six weeks into operation of that facility.

25 COMMISSIONER YAKI: Thank you.

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1 CHAIRMAN CASTRO: Commissioner Heriot?

2 COMMISSIONER HERIOT: Mr. Conry, you're
3 the popular guy on this panel, and I'm going to
4 continue in that tradition.

5 One question I want—a more general
6 question is, what do you see as the advantages to
7 the American people of contracting with companies
8 like yours, private companies that provide
9 detention facilities? What are the advantages of
10 doing that over going through the more traditional
11 route of using federal facilities? And what if any
12 disadvantages do you see on that?

13 One thing I was thinking about, given
14 that I have experience working for the Federal
15 Government here in my capacity as a Commissioner,
16 which is just a part-time job, my regular job is as
17 a law professor at a small university, and there's
18 a big difference in sort of procedure. Small
19 universities can be much more flexible and
20 governments are slow to respond to things.

21 Do you see your company as more
22 flexible and able to address emergency situations?
23 The sister was talking about how we weren't
24 prepared for the number of detainees that came, or
25 the number of people coming to the border. Do you

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1 feel that your corporation is more flexible and
2 able to deal with issues like that, more so than,
3 say, a federal facilities would be that are stuck
4 with very elaborate procedures for purchasing and
5 such?

6 MR. CONRY: Thank you, Commissioner, for
7 that question. I think that CCA has been in the
8 business of providing detention beds to our ICE
9 partner for over 30 years. They were our-~~our~~ very
10 first customer in-in Houston. And from that day
11 forward, we've been in continuous business and
12 partnership with ICE because of our ability to
13 provide very often just-in-time beds, or solutions
14 to very challenging strategies that they have
15 enacted across the country. So in my opinion,
16 that's why ICE continues to use our-our facilities
17 and-and come to the private sector to meet their
18 needs.

19 COMMISSIONER HERIOT: Any other
20 advantages to using your company as opposed to the
21 more traditional route?

22 MR. CONRY: No, but I did want to say
23 that, Mr. Landy mentioned it in his session, and
24 I'd like to also mention it, there is in my opinion
25 no difference between the standards under which we

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1 operate. The standards apply across all detention
2 facilities. So as far as that issue is concerned,
3 we consistently are held to the same standards that
4 would occur in a federal facility.

5 COMMISSIONER HERIOT: Most of your
6 facilities that deal with ICE detainees, are they
7 dedicated just to that purpose, or do you have more
8 mixed facilities?

9 MR. CONRY: The vast majority are
10 dedicated contract facilities, yes.

11 COMMISSIONER HERIOT: Okay.

12 CHAIRMAN CASTRO: Okay. We're moving on
13 now to Commissioner Kladney, and then Commissioner
14 Achtenberg.

15 COMMISSIONER KLADNEY: Thank you, Mr.
16 Chairman.

17 CHAIRMAN CASTRO: Welcome.

18 COMMISSIONER KLADNEY: I'm sitting over
19 here trying to be quiet.

20 CHAIRMAN CASTRO: I know it's hard, but
21 go for it.

22 COMMISSIONER KLADNEY: Mr. Conry, I just
23 have one question for you. Pretty simple. Of the
24 35,000 beds under contract that everybody talks
25 about, how many beds does CCA have?

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1 MR. CONRY: At this moment in time we
2 have about 5,500 ICE detainees in custody, so-

3 COMMISSIONER KLADNEY: But how many beds
4 does your contract call for?

5 MR. CONRY: Oftentimes our contract does
6 not call for a certain number of beds. There are a
7 certain number of beds available at the facility.
8 And the beauty of our model is that that number can
9 change as the demand changes over time, and we have
10 the flexibility to manage those facilities in such
11 a way to meet the demand when it's there and for us
12 to scale back that operation-

13 COMMISSIONER KLADNEY: Oh, no, no, no.
14 That-I think I-because of the last question, you
15 probably-how many beds do you get paid for every
16 day, or over the year, basically? The 35,000 beds?

17 MR. CONRY: That is not how our
18 contracts are structured, sir.

19 COMMISSIONER KLADNEY: Okay. How are
20 they structured?

21 MR. CONRY: It's a per-most contracts
22 are a per diem basis where the number of beds used
23 is the number of-of beds charged.

24 COMMISSIONER KLADNEY: Paid for?

25 MR. CONRY: Yes.

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1 COMMISSIONER KLADNEY: So we must have
2 some wrong information, because we're told that we
3 pay for 35,000 beds a day, or is under contract.
4 That's not necessarily true with your company?

5 MR. CONRY: It's not necessarily-

6 COMMISSIONER KLADNEY: Not true?
7 (Laughter)

8 MR. CONRY:-true with my company. No,
9 that's-with my company, that's correct.

10 COMMISSIONER KLADNEY: Thank you.

11 I'm sorry if I butcher your name, Ms.
12 Griz-

13 MS. GRISEZ: "Griz-ay."

14 COMMISSIONER KLADNEY: Griz-

15 MS. GRISEZ: "Griz-ay."

16 COMMISSIONER KLADNEY: "Griz-ay." Ah,
17 sounds French.

18 MS. GRISEZ: Mais oui.

19 (Laughter)

20 COMMISSIONER KLADNEY: Okay. I happen to
21 have been a member of the ABA for a while, and I'm
22 interested in your position that people should be
23 represented. Is that correct? Is that the
24 Commission's position?

25 MS. GRISEZ: The ABA's official policy

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1 is that there should be appointed counsel for
2 everyone in removal proceedings, but with the
3 recognition that there's no-financially it's not
4 viable for the Government to have appointed counsel
5 for everyone right now. So we have policy that
6 recommends a triaged system where everyone should
7 have access to a legal orientation program, a "know
8 your rights" presentation, and through that, a
9 sifting mechanism where people who have identified
10 viable claims for relief would then be referred for
11 legal representation, but that all the particularly
12 vulnerable populations, which include children and
13 the mentally disabled, should have appointed
14 counsel.

15 COMMISSIONER KLADNEY: So those without
16 what you would consider viable claims, how would
17 that be decided? I guess those people get deported?

18 MS. GRISEZ: The legal-

19 COMMISSIONER KLADNEY: Or at least no
20 representation.

21 MS. GRISEZ: The legal rights
22 presentations, the legal orientation programs that
23 we advocate, are informational presentations that
24 would be universally given to all detainees, with
25 after that an opportunity for individual

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1 consultation for people to figure out whether they
2 have any availability of relief.

3 COMMISSIONER KLADNEY: Have you done a
4 private program, a pilot program or anything like
5 that, or is that in function now?

6 MS. GRISEZ: The—it's the Government
7 who's paying for the formal legal orientation
8 programs, and they exist right now I think in about
9 25 percent of the ICE facilities. So one of our
10 recommendations is, those should be universal. The
11 ABA itself operates one of our projects in San
12 Diego, California, the Immigration Justice Project
13 there, and part of that project is aimed at doing
14 this type of screening, triage, and referral for
15 pro bono or direct representation by staff of
16 everybody who's found to have a viable claim. And
17 it's part of the design of that project to have a
18 study about the efficacy of the legal orientation
19 program, as well as the direct—

20 (Simultaneous speaking)

21 COMMISSIONER KLADNEY: And that hasn't
22 been done yet, correct?

23 MS. GRISEZ: That's not complete, no,
24 sir.

25 COMMISSIONER KLADNEY: Okay. And I

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1 noticed in the next paragraph in your statement you
2 talk about the ABA pro bono program.

3 MS. GRISEZ: Yes.

4 COMMISSIONER KLADNEY: You have 400,000
5 members, about \$180 million in dues every year. You
6 said here there's 400,000 foreign nationals in
7 detention throughout the year. I assume if you
8 include families, it's less than 400,000 cases, I
9 mean, because they would be together if it was a
10 family, is that correct?

11 MS. GRISEZ: Probably for some.

12 COMMISSIONER KLADNEY: Okay. But
13 basically, we could say safely 300, 350, somewhere
14 in that area? Maybe 300?

15 MS. GRISEZ: Cases?

16 COMMISSIONER KLADNEY: Cases.

17 MS. GRISEZ: Individual cases—

18 COMMISSIONER KLADNEY: Yes.

19 MS. GRISEZ:—in removal proceedings?
20 That's probably about right.

21 COMMISSIONER KLADNEY: Okay. So you also
22 mention the pro bono representation programs.
23 Having been a member of the ABA, the ABA never
24 called me to do pro bono. It was always through the
25 state. So, how many people does the ABA pro bono

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1 program represent in removal proceedings?

2 MS. GRISEZ: Well, the ABA itself has
3 only two direct representation programs. One is Pro
4 Bar on the border in Harlingen, Texas, and the
5 other one is IJP that I mentioned in San Diego.
6 Those projects both represent some people through
7 their staff and others through pro bono placement
8 of the cases of people who receive the legal
9 orientation and then are placed for pro bono.

10 Separately from that—

11 COMMISSIONER KLADNEY: Do you have any
12 idea as to the number?

13 MS. GRISEZ: The numbers? I don't, but
14 we could provide it.

15 COMMISSIONER KLADNEY: Thank you.

16 MS. GRISEZ: The Commission staff would
17 have it, but I don't know.

18 The other thing that I should say about
19 the outreach from the ABA is right now in the—in
20 the most recent several months, since the border
21 surge, the current ABA president, William Hubbard,
22 and the former president, Jim Silkenat, went to the
23 border, did the tours that I mentioned, and there's
24 right now underway a very large working group, an
25 outreach, recruitment, training, placement effort

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1 that the ABA is conducting specifically with a goal
2 to representation of the children.

3 COMMISSIONER KLADNEY: What does that
4 mean, outreach, representation?

5 MS. GRISEZ: Well, I'd need an hour by
6 myself for the whole panel, but-

7 COMMISSIONER KLADNEY: Maybe the
8 highlights.

9 COMMISSIONER KLADNEY: And after that
10 we're going to go to Commissioner Achtenberg. Okay?

11 COMMISSIONER KLADNEY: I'm done. Thank
12 you, Mr. Chairman.

13 CHAIRMAN CASTRO: You're welcome,
14 Commissioner.

15 Go ahead.

16 MS. GRISEZ: Do you want me to answer
17 the question?

18 COMMISSIONER KLADNEY: Yes, I do.

19 MS. GRISEZ: All right.

20 COMMISSIONER KLADNEY: The short
21 version, not the hour version.

22 MS. GRISEZ: There is--there's about 14
23 or 15 ABA leaders drawn from a variety of sections
24 and entities, specifically family law, to address
25 the SIJS cases, litigators, and a number of other

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1 key sections, in the ABA. Then we've broken down
2 into a number of committees partnering to identify
3 where are the legal service programs around the
4 country that are serving the children, who has
5 capacity to take more volunteers? We've launched
6 two websites with training resources. There's a
7 portal where you can sign up to volunteer to take a
8 case.

9 I'm doing a training in April in New
10 Orleans. Training is happening next week in
11 Houston. So there's a—a big effort underway
12 regionally and at the local level to try to bring
13 in volunteers who are new to this area of law and
14 get them either involved in the family law piece
15 for SIJ or the immigration piece, so that there's a
16 complete cadre of lawyers available to handle both
17 aspects of the needs of the children.

18 CHAIRMAN CASTRO: Thank you.

19 COMMISSIONER KLADNEY: If you could just
20 get us those numbers on an annual basis, I'd
21 appreciate it.

22 MS. GRISEZ: For the direct service
23 projects?

24 COMMISSIONER KLADNEY: Yes.

25 MS. GRISEZ: Thank you.

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1 CHAIRMAN CASTRO: Commissioner
2 Achtenberg, you have the floor.

3 COMMISSIONER ACHTENBERG: Thank you very
4 much.

5 CHAIRMAN CASTRO: You're welcome.

6 COMMISSIONER ACHTENBERG: I have a brief
7 question for Ms. Grisez, one for Ms. Hinojosa, and
8 one for Sister Pimentel.

9 Could you describe the likelihood of
10 prevailing if one is represented by counsel as
11 compared to pro se?

12 MS. GRISEZ: Thank you for the question.
13 There--there are not statistics directly with regard
14 to the children, but in general there have been a
15 number of studies, detained and non-detained, about
16 the likelihood of success and comparing represented
17 versus unrepresented, mostly in the asylum context.
18 So, that doesn't address every single claim. But
19 roughly, it's been found six or seven times more
20 likely to achieve some form of relief if you're
21 represented than if you're not represented. And the
22 proportion is even bigger if someone's in
23 detention. The likelihood of success for
24 unrepresented detained persons is somewhere down
25 around as low as 15 percent.

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1 COMMISSIONER ACHTENBERG: Fifteen
2 percent?

3 MS. GRISEZ: So I would personally--this
4 is not a policy matter, but I would extrapolate for
5 children that the percentages would be even
6 greater, because the likelihood that a pro se child
7 could achieve success, I think, would be even less
8 than that of a pro se adult.

9 COMMISSIONER ACHTENBERG: One would
10 think. Do you know anything about the origins of
11 the public policy decision that was made that
12 detainees are not entitled to representation of
13 counsel? Do you know anything about the origins of
14 that?

15 MS. GRISEZ: Well, that--it's not limited
16 to detainees. It's nobody in removal proceedings,
17 detained or otherwise, is entitled to appointed
18 counsel. I don't know what the public policy
19 reasons are behind that. I know that the basic
20 distinction is that immigration proceedings are
21 considered to be civil and not criminal, so that
22 you don't have the traditional constitutional right
23 to appointed counsel.

24 The position of the ABA is that there--
25 as the Supreme Court has said, the right to remain

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1 in the United States can be, you know, all-akin to
2 all that makes life worth living and that what's
3 procedural due process, although it has to be
4 evaluated on a case-by-case basis, there's a-a very
5 great-a closeness to the criminal system, although
6 they are purely civil proceedings. And I-I believe
7 that's the underpinning to the no appointed counsel
8 notion.

9 COMMISSIONER ACHTENBERG: Well, it seems
10 to me that, just my own observation, if the
11 likelihood of prevailing on the merits is so
12 significantly enhanced by representation of counsel
13 or so significantly diminished if one has no
14 representation than sort of the arbitrary nature of
15 the system approaches-maybe substantive due process
16 is out of favor these days, but it seems to me that
17 that system is approaching rapidly a claim for
18 substantive due process that I would certainly like
19 to see this Commission consider pursuing.

20 Thank you very much for that.

21 MS. GRISEZ: You're welcome.

22 COMMISSIONER ACHTENBERG: Ms. Hinojosa,
23 on the issue of edible food and this whole notion
24 that people are being starved and not properly fed,
25 was it your impression in the investigations that

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1 you undertook that this was a pervasive problem?

2 MS. HINOJOSA: I-I will tell you that--so
3 remember that the *FRONTLINE*--you know, we
4 investigated between 2010 and 2011. And I wanted to
5 be very factual in my presentation, so that's why I
6 based my presentation on that.

7 COMMISSIONER ACHTENBERG: Yes.

8 MS. HINOJOSA: I will tell you that
9 yesterday, I was speaking with someone who works
10 with children who are in detention, not close to
11 the border. And this person said to me that the
12 children said that what they were receiving--so,
13 we're talking less than a year ago--was one frozen
14 burrito a day, still frozen, and a rotten apple.
15 That's what this person said to me just yesterday.

16 So, the complaints that I was hearing
17 in 2010 were food that was spoiled, food that was
18 rotten, food that had expired because it's cheaper
19 to buy it that way. The case--you know, the case of
20 the maggots in--I--that the maggots in the food was--I
21 had heard over and over again. Of course, it was
22 confirmed by Dr. Tawanna Kotsalin (phonetic) when
23 she said she saw it.

24 But, yes, food and hunger comes up
25 immediately. So that's why, as I'm hearing the

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1 testimonies here, I'm—I'm going back to what the
2 Chair said about there seems to be some kind of a
3 disconnect. I'm hearing it, too. I don't understand
4 how we're hearing that all of this policy and
5 regulation exists, but when you continue to ask the
6 people on the front lines, they're still saying it
7 looks like this. It's called the ice box. It was
8 cold. They're sleeping on a cement floor.

9 COMMISSIONER ACHTENBERG: Yes.

10 MS. HINOJOSA: So, I'm—I'm concerned
11 about the disconnect.

12 COMMISSIONER ACHTENBERG: I think we're
13 going to have to address the disconnect.

14 And finally, Sister Pimentel, you
15 mention in your statement I believe that you think
16 that families and children are being detained in
17 some effort to deter others from coming across the
18 border. Could you talk a little bit more about that
19 impression that you left?

20 SISTER PIMENTEL: I think that—that,
21 yes, people—this—the families are being detained as
22 an effort to send the message back to their
23 homeland that—so they don't continue coming. I—I
24 believe, that's my impression.

25 I would just like to take my—our

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1 position—take a moment to express opposition to
2 detention as an alternative, because Catholic
3 Charities here in—in our area, together with the
4 U.S. Conference of Catholic Bishops, believe this
5 practice to be inhumane.

6 CHAIRMAN CASTRO: Yes.

7 SISTER PIMENTEL: These women—women and
8 children are already traumatized. Incarcerated—
9 incarcerating them as criminals only traumatizes
10 them further. Children are subject to emotional and
11 psychological damage from being incarcerated, so
12 detention is not a good option. Instead of
13 subjecting them to detention, these families should
14 be released to families—to a community-based case
15 management alternative to the detention model. This
16 model ensures that families are treated humanely,
17 but also helping them to show up to hearings. We—we
18 stand ready to work with the administration to
19 assist with this model and support these families.

20 COMMISSIONER ACHTENBERG: Thank you.

21 CHAIRMAN CASTRO: I have a follow-up
22 question for you, Mr. Conry. Earlier, I asked you
23 about the use of prison labor and for-profit
24 prisons. You said you were not aware of any of them
25 that did that. I'm going to read you something and

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1 then ask you to comment on it.

2 It was an article from March of 2014
3 entitled, "The Prison Industry in the United
4 States: Big Business or a New Form of Slavery?" by
5 Vicky Pelaez for the Global Research Center. And in
6 particular to the question I asked earlier, it
7 says, quote, "At least 37 states have legalized the
8 contracting of prison labor by private corporations
9 that mount their operations inside state prisons.
10 The list of such companies contains the cream of
11 the U.S. corporate society: IBM, Boeing, Motorola,
12 Microsoft, AT&T Wireless, Texas Instruments, Dell,
13 Compaq, Honeywell, Hewlett-Packard, Nortel, Lucent
14 Technologies, 3Com, Intel, Northern Telecom, TWA,
15 Nordstrom's, Revlon, Macy's, Pierre Cardin, Target
16 Stores, and many more. All of these businesses are
17 excited about the economic boom generation by
18 prison labor. Just between 1980 and 1994, profits
19 went up from \$392 million to \$1.31 billion. Inmates
20 in state penitentiaries generally receive the
21 minimum wage for their work, but not all; in
22 Colorado, they get \$2 an hour, well under the
23 minimum. And in the privately run prisons, they
24 receive as little as 17 cents per hour for a
25 maximum of six hours a day, the equivalent of \$20 a

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1 month. However, the highest-paying private prison
2 is CCA in Tennessee, where prisoners receive 50
3 cents per hour and find the pay in the prisons to
4 be obviously generous as a result of that."

5 So with that in mind, can you answer my
6 question again about the use of prison labor by
7 your company and others to generate a profit, and
8 how does that function?

9 MR. CONRY: I'd be glad to.

10 CHAIRMAN CASTRO: So did you just
11 misunderstand me earlier or—

12 MR. CONRY: No, I was answering the
13 question in the context of the briefing being held
14 today, which is immigrant detention centers. So
15 again—

16 CHAIRMAN CASTRO: Oh, this is not
17 immigrant detention centers?

18 MR. CONRY:—categorically, we do not use
19 detainee labor for outside contracts in any one of
20 our immigration detention facilities.

21 CHAIRMAN CASTRO: So, none of these
22 companies are using immigrant labor? They're using
23 prison labor from other of your facilities?

24 MR. CONRY: The—

25 CHAIRMAN CASTRO: Well, go ahead and

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1 answer the question more fully before I assume what
2 you're going to say.

3 MR. CONRY: Great. So, we do have an
4 inmate work program in some of—some of our
5 Tennessee facilities, which are state prisons that
6 we operate for the State of Tennessee. And they are
7 paid at a rate that is established with our state
8 customer, and none of those facilities have
9 immigrants housed therein.

10 CHAIRMAN CASTRO: Okay. Thank you. I'll
11 ask—well, it's—oh, go ahead. You've got more to
12 add?

13 MR. CONRY: I'd just like to make one
14 clarification—

15 CHAIRMAN CASTRO: Sure.

16 MR. CONRY:—to the Commissioner's
17 question. It came to mind after I finished my
18 answer, but wanted to make sure the—the record is
19 clear. So, there is one facility that I'm aware of
20 that holds ICE detainees where we get a fixed
21 payment per month for a certain number of
22 detainees. And today the number of detainees at
23 that facility is below that number. And that would
24 be the Elizabeth Detention Center.

25 COMMISSIONER KLADNEY: Do you know by

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1 what percentage it's below, by any chance?

2 MR. CONRY: The last time I looked I
3 believe we were housing about 140 detainees there,
4 and I believe the fixed payment includes 285 beds.

5 COMMISSIONER KLADNEY: Thank you very
6 much for clarifying that.

7 MR. CONRY: One of our—one our very
8 smallest facilities.

9 CHAIRMAN CASTRO: I'm going to ask each,
10 Sister Pimentel and Maria Hinojosa and Ms. Grisez;
11 although, Ms. Grisez, you have a number of books
12 there that have recommendations—we have to make
13 recommendations to the President and Congress on
14 what we've found. Obviously, you've heard thus far
15 what we've seen. You're all involved in the issue
16 yourself. If you could make a recommendation to the
17 President and Congress, or some top recommendations
18 on this topic, what would you recommend? Sister?

19 SISTER PIMENTEL: I would just say again
20 what I just spoke to the Commissioner, is—it is—it
21 is that there are alternatives to detention. No
22 matter how good the detentions may look or may
23 sound, ultimately they're families, they're
24 children, and there should be an alternative to the
25 detention, that they're not criminals and—and they

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1 need the attention that a family, a child needs.
2 And that would be rather another way other than
3 that. And so, that would be one my—one of my
4 recommendations.

5 The other one would be that immediately
6 when they are detained or when they're being
7 processed, and I put it down as one of my
8 recommendations, there needs to be a presence that
9 needs to be present allowed to—pastoral care should
10 be there. And we have—we have not been able to
11 establish that. I know that efforts were there
12 initially with—with the officers and persons in—in
13 charge at this first holding facilities, with the
14 openness to do that, but it has never been able to
15 do that. And—and I think my presence there with the
16 children was very impactful and important, and it
17 should be allowed to be able to continue that.

18 CHAIRMAN CASTRO: Thank you, sister.

19 MS. HINOJOSA: So that's difficult,
20 because I'm—I'm in the business of being a
21 journalist and I'm not a policy maker. And while I
22 cover the issue of immigration, I mean, it's very
23 clear I'm an immigrant. I was born in Mexico. I
24 chose to become an American citizen. But sometimes
25 because I report about this, it's—there's a—a sense

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1 that somehow I'm taking an advocacy role. And I
2 just see this as being an advocate for America.

3 So, it's hard for me to make
4 recommendations, but I did come up with three.

5 CHAIRMAN CASTRO: Yes.

6 MS. HINOJOSA: So first of all, since we
7 have heard that it is very difficult for private
8 corporations to open up their doors to journalists
9 unless they get the approval from ICE; and in my
10 experience working with ICE, it was incredibly
11 difficult to get access--so, my recommendation would
12 be that we as journalists get access, period. We
13 should--if in fact the standards are working and
14 everything is working and the audits are fine, then
15 we should have access without any problem except
16 for asking to go in. And we should have access to
17 the people who are being detained so that we can
18 correctly understand what is happening. And if
19 there's not a problem, then bravo.

20 I--I think what Commissioner Kladney
21 raised about questions of due process--I'm sorry, as
22 well Commissioner Achtenberg, is--is a big issue.
23 Having again been out on the field and seeing
24 things, there is no way to Mirandize an
25 undocumented immigrant. You don't--there is no

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1 process right now through which immigration agents
2 come to their door and say let me explain to you
3 exactly who I am and what I'm doing, and to tell
4 you, by the way, that you don't have to open the
5 door, and to tell you that I'm looking for this
6 person, this person and this person. That doesn't
7 happen. What I witnessed was immigration agents
8 wearing outfits that said police everywhere and
9 knocking on doors at 6:00 A.M. and then saying can
10 we come in so we don't talk outside, and basically
11 coercion to get inside and ask everyone for their
12 papers.

13 So basic issues of due process, again
14 for me are—are of great concern. And again, I—I see
15 this simply as who we are as the United States of
16 America. Due process is something we believe
17 everyone has. We believe everyone has access to an
18 attorney. Everyone that I speak to around
19 immigration, I say, say, well, it's a totally
20 different system, no access, they're jaws drop. So,
21 due process right now in our country and how it's
22 being tested should be looked at.

23 And finally, just on a broader issue,
24 you know, when I became a citizen, it was through
25 Immigration Naturalization Service. It was INS. It

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1 was Immigration Naturalization Service. Today it is
2 Immigration Customs Enforcement. So, as a country
3 again, are we a country that is providing a service
4 to our forefathers and the future of our country,
5 or are we a country that says, you know what, now
6 we're just about enforcing laws that have been
7 determined and created now, and who's—who-how those
8 laws are getting decided on is still questioned.

9 So, those would be my-my
10 recommendations. Thank you for asking.

11 CHAIRMAN CASTRO: Okay. Ms. Grisez?

12 MS. GRISEZ: Thank you. I guess I have a
13 couple, one I said before. Legal orientation
14 programs for everyone, everyone in detention and
15 appointed counsel, particularly for vulnerable
16 populations: children and mentally ill.

17 The second one, I would say change the
18 statute on mandatory detention for arriving aliens.
19 This isn't something the [Obama] Administration can
20 do single-handedly, but look at that requirement as
21 something that's a source of the problem, and ICE
22 isn't put in the position of having to identify
23 priorities and make decisions about detention and
24 bed quotas if you don't start with mandatory
25 detention for arriving aliens subject only to a

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1 parole system.

2 And the third one I would say to follow
3 the ABA's recommendation about detention only when
4 absolutely necessarily, only extraordinary
5 circumstances. Remember that immigration detention,
6 administration detention, is to secure appearances.
7 It's not to punish anyone. And I don't mean to
8 disparage in any way CCA, any other contractor, or
9 the state and local jails that are being used to
10 held-hold people, but the idea that we need a
11 correctional model using corrections companies,
12 corrections facilities, guards, wardens and so
13 forth for administrative detention of children and
14 families who are asylum seekers who are not flight
15 risks because they're coming here to seek
16 permission to stay--there's a fundamental flaw in
17 the model that should be reexamined.

18 CHAIRMAN CASTRO: Thank you, Ms. Grisez.

19 Well, we're about out of time here for
20 the second panel, so I want to thank everyone for
21 your participation. It was very informative. And
22 again, we're going to take a break now until 1:00,
23 but you're welcome to stay and see the afternoon
24 panels. Thank you.

25 (Whereupon, the above-entitled matter

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1 went off the record at 12:19 p.m. and resumed at
2 1:09 p.m.)

3 **IV. PANEL III - LEGAL CHALLENGES**

4 CHAIRMAN CASTRO: We're calling the
5 meeting back into order. Thank you all for being
6 here for the continuation of our briefing on the
7 Condition-Civil Rights Conditions at Immigration
8 Detention Centers. And the current state of the
9 children who came to us this summer as refugees
10 seeking asylum in our communities throughout the
11 U.S.

12 Our afternoon panel is going to be
13 presenting to us on a number of topics that are
14 going to affect the issues that we've been talking
15 about this morning as well. But they're also going
16 to elaborate on some of the work that they're
17 conducting.

18 So, what I'd like to do is introduce
19 and then swear in the panel. Our first panel-
20 panelist is Ms. Marisa Bono, who is the staff
21 attorney with the Mexican-American Legal Defense
22 and Educational Fund.

23 Our second panelist is Karen Lucas,
24 Associate Director for Advocacy at the American
25 Immigration Lawyer's Associations. And our third

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1 and final panelist for this third panel is David
2 Stacy, Director of Policy for the Human Rights
3 Campaign [HRC].

4 And I'll ask you all to raise your
5 right hand and swear or affirm for me that the
6 information that you are about to provide to us is
7 both true and accurate to the best of your
8 knowledge and belief. Is that correct? Yes? Okay,
9 thank you.

10 Now Ms. Bono, please proceed.

11 MS. BONO: Thank you.

12 CHAIRMAN CASTRO: And make sure your
13 mic's on. There you go.

14 MS. BONO: Is that—can you hear me?

15 CHAIRMAN CASTRO: Yes.

16 MS. BONO: Can you hear me now?

17 CHAIRMAN CASTRO: Yes.

18 MS. BONO: Good afternoon Commissioners.
19 Thank you for inviting MALDEF, the Mexican-American
20 Legal Defense and Educational Fund to provide
21 testimony in this briefing today. MALDEF is a
22 national civil rights organization that conducts
23 community outreach, policy advocacy, and, when
24 necessary, litigation.

25 Protecting and promoting the civil

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1 rights of Latino immigrants who are residing in the
2 United States remains a core priority for MALDEF.
3 As the Chair said, my name is Marisa Bono, and I'm
4 a staff attorney with MALDEF. And today I'll be
5 focusing specifically on allegations of sexual
6 abuse at the Karnes Family Detention Facility
7 located in Karnes County, Texas.

8 First I'd like to emphasize that family
9 detention is not the status quo in the United
10 States. It's a relatively new phenomenon that has
11 been fraught with controversy and abuse as you've
12 heard and will hear more about today.

13 Last July, again as you've heard, ICE
14 and Customs Enforcement—ICE, Immigrations and
15 Customs Enforcement, reacted to an influx of
16 Central American immigrants at the southern borders
17 by converting preexisting Federal facilities to new
18 family detention centers for women and children
19 under the age of 17. Before that time, there was
20 only one family detention center in the U.S. Today
21 there are three, including Karnes.

22 When Karnes opened its doors on August
23 1, 2014, Texas attorneys worked to coordinate pro
24 bono services for the women and children who were
25 detained there. And almost immediately, we began

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1 receiving complaints about conditions. And
2 complaints about sexual abuse at that facility.

3 MALDEF, in addition to the University
4 of Texas School of Law, Immigration Clinic and
5 Civil Rights Clinic, the Refugee Protection Program
6 of Human Rights, First, and the Law Offices of
7 Javier & Maldonado, sent an administrative
8 complaint to the Department of Homeland Security
9 and ICE on September 20, 2014, summarizing the
10 allegations and the conditions that we had heard
11 about at the facility.

12 The abuse allegations cited in the
13 complaint include the exploitation of vulnerable
14 women by facility guards and staff, such as
15 removing the women from their cells late at night
16 or in early morning hours to engage in sexual
17 conduct in different parts of the facility. And
18 then attempting to cover up the conduct after the
19 fact.

20 Calling the detainees *novias*, or
21 girlfriend, and requesting sexual favors in
22 exchange for money and promises of assistance with
23 pending immigration cases. And in some cases, even
24 shelter when and if the women were released. And
25 also fondling, groping and kissing the female

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1 detainees in front of other detainees, including
2 children.

3 The Prison Rape Elimination Act, or
4 PREA, makes it illegal for detention center guards
5 to engage in any sexual conduct with the detainees
6 in their custody. If true, these incidents of
7 sexual abuse, harassment, and the hostile unsafe
8 work environment, violate Federal Law and
9 regulation. And they also subject the detainees to
10 conditions that are punitive and unconstitutional
11 under the Due Process Clause of the Fifth
12 Amendment.

13 We received formal responses from ICE
14 and the DHS Office of Civil Rights and Civil
15 Liberties on October 29 and December 4 of 2014,
16 respectively, stating that investigations are
17 ongoing. It's also our understanding that the
18 Office of the Inspector General was conducting an
19 investigation in October, although we don't have
20 the outcome of that investigation. And we don't
21 know if that investigation is still pending.

22 Regardless, the Federal response to
23 these allegations has been woefully deficient under
24 the PREA protocol and regulations. For example, we
25 understand that some of the witnesses and victims

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1 of the abuse have either been deported or released
2 on bond, limiting their ability and-or eliminating
3 their ability to engage and participate in the
4 investigation effectively.

5 Although at least one of the detained
6 women reported this conduct to facility personnel,
7 to our knowledge, no action has been taken to stop
8 or prevent the abuse. Instead, it's our
9 understanding that at least three of the Karnes'
10 employees who allegedly engaged in the unlawful
11 acts are still employed at the facility, still have
12 their jobs as we sit here today.

13 As recently as December 1 and December
14 4, the warden of the Karnes Facility and
15 representatives from the GEO Group, which is the
16 private correctional company that operates the
17 facility, provided public testimony to the Karnes
18 County Commissioners Court, stating that the
19 allegations were unfounded, that an investigation
20 had been concluded. And the allegations were
21 completely unfounded, even though on literally
22 precisely those days, we received communications
23 from the Federal Government stating that the
24 investigation was ongoing.

25 These are all serious violations of

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1 PREA that put women and children at risk. We
2 respectfully request that this Commission recommend
3 the proper implementation, supervision, and
4 monitoring of the PREA protocol as detailed in
5 MALDEF's submitted written testimony to this
6 Commission.

7 Put simply, this is exactly why family
8 detention doesn't work. At Karnes, the fact that
9 sexual abuse occurred, likely occurred, and is
10 potentially still occurring, show that either a
11 policy is not in place, or that it's not being
12 properly supervised, monitored, or implemented.

13 In the rush to detain families, the
14 Federal Government has failed to protect the health
15 and safety of these women and children. But instead
16 of pausing family detention and figuring out what
17 needs to be done differently and better to ensure
18 the safety of this community, the Government has
19 pushed to expand.

20 Thank you for your time today, and I
21 welcome your questions, either now or at a later
22 time.

23 CHAIRMAN CASTRO: We'll do it after
24 everyone's testified. Thank you. Ms. Lucas?

25 MS. LUCAS: Thank you. On behalf of the

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1 American Immigration Lawyers Association, I want to
2 thank the Commission for holding this briefing. And
3 for inviting us to speak. We're really grateful for
4 the oversight and the engagement of the Commission
5 on the issue of immigration detention.

6 And I'm very pleased to hear that you
7 are interested in going to visit some detention
8 facilities. I would encourage you to go to a family
9 detention facility. Either Karnes or Dilley. We
10 have practitioners, AILA volunteer members who are
11 on the ground there and are happy to meet with you
12 and provide you any information that you need.

13 The Administration's recent massive
14 expansion of family detention requires your
15 immediate attention. The mass detention of asylum-
16 seeking mothers and their children, many still
17 breast-feeding infants, is a humanitarian disaster
18 that violates fundamental due process rights as
19 well as the civil rights of hundreds of families
20 who have fled violence from the Northern Triangle
21 Region of Central America.

22 By the middle of next year, the Obama
23 Administration will be detaining nearly 4,000
24 children and mothers. A forty-fold increase in the
25 use of detention for families.

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1 Beginning in July of last year, AILA
2 members from across the country responded to the
3 urgent need for, and indeed the complete lack of
4 legal representation at the first family detention
5 facility built after the surge in the summer in
6 Artesia, New Mexico, by traveling at their own
7 expense to the middle of nowhere in New Mexico. And
8 even working 18 to 20 hours a day, seven days a
9 week, volunteers were barely able to meet the
10 demand for legal help.

11 And I would just note here that the new
12 detention facility in Dilley is going to have far
13 more detainees than the Artesia Facility had.

14 The project, the AILA Immigration-
15 sorry, the AILA Immigration Counsel/Artesia Pro
16 Bono Project still continues to represent families
17 who had been detained in Artesia and are now being
18 held at Karnes and at Dilley. I only have time to
19 make a few remarks. I hope that I can channel the
20 passion of our volunteer attorneys as well as the
21 pain of their clients.

22 First, I just want to focus really
23 briefly on who these detainees are. The vast
24 majority of the children and mothers who are being
25 held in these family detention facilities are

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1 asylum seekers who would qualify for protection
2 under U.S. and international law. That is who they
3 are.

4 We know this because the AILA
5 Immigration Counsel Project has won 14 out of 15 of
6 their asylum hearings on behalf of these women. We
7 know this because, in the first month of Dilley
8 being opened, on the NGO tour that we took of the
9 facility, 80 percent of the women who are currently
10 in that facility had already expressed a fear of
11 returning to their home countries.

12 The reality is that family detention
13 incarcerates with policies specially designed to
14 make release as difficult as possible. And to make
15 deportation as quick as possible the most
16 vulnerable individuals, children, and asylum
17 seekers who we have a moral and legal obligation to
18 protect.

19 It is also important to note that more
20 than half of the detainees in these family
21 facilities are children. The average age of a child
22 detained at Artesia was just six and a half years.
23 Currently, there is a 20-day-old child in detention
24 at Burk. Not only is the detention of children
25 wrong, but it is in all but the narrowest

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1 circumstances unlawful pursuant to a 1997
2 settlement agreement that is still in force in the
3 Flores litigation.

4 Secondly, I want to be more concrete
5 about some of the ways in which family detention
6 deprives detainees of due process. It rushes
7 individuals through an expedited removal process
8 that often results in legitimate legal claims
9 falling through the cracks.

10 It detains indigenous language speakers
11 for months, despite the fact that they cannot
12 adequately communicate with guards, other
13 detainees, or Government officials. It detains
14 without regard to whether detention is necessary
15 and appropriate in a particular case.

16 And the detention of anyone without an
17 individualized assessment, not on the basis of what
18 she personally has done or will do, but to send a
19 message to other people in another country, does
20 not even begin to comply with the due process
21 limits on the Government's power to take away
22 someone's liberty.

23 And family detention undermines
24 meaningful access to legal counsel. Across the
25 board, attorneys who have served clients in Artesia

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1 and now are serving clients at Karnes and Dilley,
2 report serious obstacles to communicating with and
3 advocating on behalf of their clients.

4 And let's be clear. The massive
5 outpouring of pro bono assistance that we saw at
6 Artesia and that resulted in so many asylum
7 victories, is not sustainable or easily replicable.
8 Especially for a facility the size of Dilley, which
9 will have 2,400 beds. And Karnes is doubling, from
10 500 beds to over 1,000 beds.

11 There is no way to provide adequate
12 representation for these detainees. And without
13 counsel, without a judge, isolated in detention and
14 run as quickly as possible through the system,
15 there is no meaningful opportunity to seek
16 protection, period.

17 I included in my testimony a list of
18 recommendations that I urge the Commission to
19 consider. But the first and foremost and
20 fundamental recommendation is to bring about an end
21 to family detention.

22 Thank you. I look forward to your
23 questions.

24 CHAIRMAN CASTRO: Thank you. Mr. Stacy?

25 MR. STACY: Thank you Mr. Chairman and

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1 members of the Commission. My name is David Stacy.
2 I'm the Government Affairs Director for the Human
3 Rights Campaign, America's largest civil rights
4 organization working on LGBT equality.

5 On behalf of our 1.5 million members
6 and supporters, I'm honored to speak today about
7 the state of civil rights at immigration detention
8 facilities. One additional note: I must attend a
9 White House-convened meeting on hate crimes later
10 this afternoon. So I apologize for leaving slightly
11 early from here.

12 I'll make four key points today in my
13 oral testimony. First, LGBT people are particularly
14 vulnerable to sexual abuse and physical abuse in
15 institutional settings. Second, the United States
16 has obligations under international treaties.

17 Third, the Department of Homeland
18 Security's implementation of PREA is not adequate
19 to achieve the Act's objectives and falls short of
20 the standards adopted by the Department of Justice.
21 And finally, transgender detainees should not be
22 faced with the choice of administrative segregation
23 or staying in facilities that are unsafe or
24 inconsistent with their gender identity. At the end
25 of my testimony, I'll share HRC's recommendations

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1 for DHS and for this Commission.

2 LGBT people are particularly vulnerable
3 to abuse when they enter into institutional
4 settings and constitute a high risk population. The
5 Bureau of Justice Statistics [BJS] National Former
6 Prisoner Survey found homosexual and bisexual men
7 report approximately ten times the rate of sexual
8 victimization by another inmate compared to
9 straight inmates.

10 The statistics are worse for
11 transgender inmates. In December 2014, BJS reported
12 that 24.1 percent of transgender inmates in State
13 and Federal prisons were the victims of abuse by an
14 inmate. And 16.7 percent by a staff.

15 Under the convention against torture,
16 the United States has an obligation to guard
17 against all forms of cruel, inhumane, or degrading
18 treatment or punishment. The United Nation's
19 Committee Against Torture's most recent
20 recommendation called on the United States to
21 "design and implement appropriate measures to
22 prevent all sexual violence in its detention
23 centers."

24 As you know, in response to the
25 alarming rate of sexual violence in confinement,

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1 Congress enacted PREA in 2003. The Department of
2 Homeland Security finally promulgated its own rules
3 in March 2014. Unfortunately, the DHS rules fail to
4 adequately protect LGBT persons.

5 Two examples provide greater clarity.
6 First, while DOJ regulations mandate that
7 transgender persons have the opportunity to shower
8 separately from others, DHS limited this protection
9 by adding a vague and unexplained qualifier, "when
10 operationally feasible." Second, although DHS
11 regulations mandate that detention centers should
12 not base decisions on housing, for example, solely
13 on identity documents or physical anatomy, the
14 rules merely require that they "consider the
15 detainee's gender self-identification."

16 In contrast, this is less protection
17 than the Department of Justice offers. And their
18 regulations state a transgender intersects an
19 inmate's own views with respect to his or her own
20 safety, shall be given serious consideration.

21 Too often, albeit with the laudable
22 goal of protecting transgender detainees from abuse
23 and violence, non-punitive administrative
24 segregation is used. Studies have shown that non-
25 punitive segregation can cause lasting emotional

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1 and physical harm.

2 In September 2013, ICE did issue a new
3 directive that segregation of detainees be used as
4 a last resort and not as the norm. However, DHS has
5 taken—and while DHS has taken implementation
6 seriously, many transgender detainees still face
7 that untenable choice, remain silent when they're
8 fearful of their own safety, or speak out and risk
9 segregation.

10 In addition to the 2013 directive, ICE
11 has made some progress on the goal of providing
12 detainees with protecting them from sexual assault
13 with its 2011 performance based National Detention
14 Standards. Unfortunately, implementation has been
15 slow.

16 In addition, DHS's Office of Civil
17 Rights and Civil Liberties has implemented a system
18 to identify, tack, and investigate claims of sexual
19 violence. And has provided avenues for redress,
20 including monetary compensation.

21 However, the problem is not statistics,
22 it's not a dearth of procedures in place for
23 reporting and tracking sexual assaults, but it's
24 the slow pace of policy changes and education that
25 would actually address the unique needs of LGBT

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1 detainees. To that end, HRC urges DHS to swiftly
2 work to protect all LGBT detainees.

3 This can be done in several ways.
4 First, DHS must fully implement PREA and its
5 detention standards. This means DHS should ensure
6 that all facilities comply with the agency's PREA
7 regulations, including private contracting
8 facilities.

9 And that appropriate PREA audits take
10 place at each facility in a timely manner. Given
11 the heightened risk of sexual assaults, using
12 limited resources to detain transgender individuals
13 should not be an ICE priority, except for cases
14 involving serious public safety concerns.

15 In cases where the statute requires
16 mandatory custody, DHS should categorize all forms
17 of detention, such as home confinement and
18 community-based supervision as detention, even for
19 those subject to mandatory custody. This would
20 remove non-dangerous LGBT individuals from-
21 oftentimes dangerous confinement facilities.

22 For the Commission, we all hope the
23 Commission will use this briefing and additional
24 meetings with DHS if necessary, to understand the
25 challenges confronting DHS as the agency works to

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1 increase accountability, limit detention, and fully
2 implement PREA. Accordingly, the Commission should
3 ask the Government Accountability Office [GAO] to
4 specifically investigate reports of sexual assault
5 and violence against LGBT detainees, including the
6 number of substantiated, unsubstantiated, and
7 unfound allegations, as well as steps that are
8 being taken to protect LGBT detainees from unique
9 and pervasive harassment.

10 The Commission should ask DHS for a
11 written report on the progress made to implement
12 PREA regulations with special emphasis on
13 provisions related to transgender detainees. This
14 includes improved training, identifying LGBT
15 detainees, and screening and appropriate placement,
16 separate shower access for transgender detainees,
17 and consideration of LGBT status in sexual assault
18 incident reviews.

19 Finally, the Commission should request
20 a written response from DHS on the status of
21 implementing each recommendation from the 2004 GAO
22 report on prevention and detection of sexual
23 assault and abuse in DHS confinement facilities.
24 DHS received a copy of the draft report and
25 concurred with all of the recommendations except

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1 one, noting that it would implement through 2015.

2 Mr. Chairman and members of the
3 Commission, thanks again for the opportunity to
4 testify today. And we're really appreciate the fact
5 that you're looking into this really serious
6 problem. And we hope that your recommendations will
7 help improve the situation for LGBT detainees and
8 other detainees. Thank you.

9 CHAIRMAN CASTRO: Thank you Mr. Stacy.
10 And I'll now open it up to Commissioners.
11 Commissioner Kladney?

12 COMMISSIONER KLADNEY: Mr. Stacy, were
13 you here this morning when I was—I asked the
14 question about LGBT and I was given an answer that
15 they have a facility by Los Angeles. Were you here?

16 MR. STACY: I was not here this morning,
17 no.

18 COMMISSIONER KLADNEY: So, I asked the
19 gentleman whether they ask people when they come
20 into the country, when they initially interview
21 them, whether they're LGBT, and he said no.

22 MR. STACY: Um-hum.

23 COMMISSIONER KLADNEY: And at lunch we
24 were talking, and should they disclose, should the
25 Government disclose that there is a facility for

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1 LGBT people in the Governmental system to those
2 people? Or should they ask them whether they—how
3 should they approach these issues?

4 MR. STACY: Sure. Well, you know,
5 obviously, the privacy of LGBT people is something
6 that is relevant here. Merely asking folks about
7 their sexual orientation or gender identity—is not
8 problematic from our perspective. Whether folks are
9 required to disclose that is a different story. And
10 we certainly would have concerns about that.

11 But giving detainees options for how
12 they are detained is certainly something we want to
13 take a look at. Some detainees have greater
14 concerns about their safety. And that's why the
15 PREA standards adopted by DOJ are more desirable
16 and better than the standards that DHS uses because
17 it's giving serious consideration to the detainee's
18 own sense of their perceived risk.

19 COMMISSIONER KLADNEY: So you would have
20 no problem with that kind of questions or
21 disclosure of the Government saying they have this
22 facility? And leave it up to the detainee?

23 MR. STACY: I think that's right, that
24 we would—I think obviously we'd want to take a look
25 at what—how that's phrased—

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1 COMMISSIONER KLADNEY: Right.

2 MR. STACY: And make sure that people
3 understand that they have privacy concerns and they
4 don't have—you know, are not required to disclose,
5 yes.

6 COMMISSIONER KLADNEY: And the
7 statistics you were using, were statistics for
8 State and Federal prisons, not detention centers,
9 right?

10 MR. STACY: Yes. There are not adequate,
11 or any data really, around ICE detention centers.

12 COMMISSIONER KLADNEY: And Ms. Bono, how
13 would you change family detention?

14 MS. BONO: I don't think there is a way.
15 I don't think there's a workable way to detain
16 women and children. Especially with the population
17 that's doubly vulnerable because they're coming
18 from backgrounds where they've already been victims
19 of such horrific violence and exploitation.

20 Before the system that's currently in
21 place evolved, women and children who came into
22 this country and had pending immigration cases were
23 often monitored electronically. And that system
24 worked just fine and very appropriately.

25 As Ms. Lucas said, these women are

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1 currently being detained without any consideration
2 as to whether or not they pose a threat to the
3 community. And whether or not they pose a flight
4 risk.

5 COMMISSIONER KLADNEY: Right. So you
6 would just use electronics, is that correct?

7 MS. BONO: I think there are much less
8 restrictive alternatives to family-based detention.

9 COMMISSIONER KLADNEY: And what else
10 besides electronics? You said less restrict-other
11 less restrictive stuff.

12 MS. BONO: Releasing women on bond and
13 to sponsors in the community until their
14 immigration cases are resolved.

15 COMMISSIONER KLADNEY: And if the women
16 and children have no family in the States, how
17 would they support themselves pending resolution?

18 MS. BONO: How would they support
19 themselves? I can't speculate how families support
20 themselves outside of the detention facilities.

21 But I'm certain after meeting with and
22 speaking with these women and children on the
23 ground, that these mothers would much prefer to be
24 in the community, to have their children in public
25 schools, and to be outside of a prison-like setting

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1 than to be detained with their kids.

2 COMMISSIONER KLADNEY: So they would
3 find a way, is what you're saying?

4 MS. BONO: They all do.

5 COMMISSIONER KLADNEY: Okay. And Ms.
6 Lucas, one question. Two family facilities, Karnes
7 and Dilley, if we were to choose one to go to,
8 which one would you think would be the best for us
9 to see?

10 MS. LUCAS: Oh goodness! Well, I think
11 that would depend on the timing. The Dilley
12 facility is only in temporary structures right now.
13 And so it's not up to capacity yet, and the full
14 structures have not been built.

15 And so I would wait on Dilley until we
16 see what the full new structures would look like.
17 So, if you were going to go tomorrow, I would say
18 Karnes.

19 COMMISSIONER KLADNEY: Thank you.

20 CHAIRMAN CASTRO: Madam Vice Chair?

21 VICE CHAIR TIMMONS-GOODSON: Thank you
22 very much Mr. Chair. Ms. Lucas, you indicated that
23 there are widely divergent bond amounts set by the
24 immigration judges at Artesia. And you've gone to
25 great lengths giving us examples of specific bond

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1 amounts.

2 I know that in a State's court system,
3 as well as in the Federal system, the court is
4 often governed by guidelines or recommended bond
5 amounts. Are you aware of whether there are any
6 such guidelines for bonds set by the immigration
7 judges? And if there are not, might that be a way
8 to begin addressing the divergence in bonds?

9 MS. LUCAS: Oh, that's a great question.
10 I actually don't know if there are guidelines. I
11 can find that out for you.

12 Nationally, the immigration judges—the
13 average bond amount was about \$5,200.00. And I
14 mean, even in—outside of the context of family
15 detention, immigration bonds will greatly vary.

16 I agree that—and as far as guidelines,
17 I would say that the best guidance on appropriate
18 bond amounts is the existing case law. Because
19 there is BIA [Board of Immigration Appeals] case
20 law on the factors to consider for bond.

21 And so, Matter of Patel is a 1970s case
22 that has been the foundation of what is relevant
23 for bond in the immigration context. And that is
24 public safety risk and flight risk. And there's
25 more information: the case law has developed more

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1 aspects of both of those things as to you know,
2 what is appropriate to consider and what isn't.

3 So that is where I would look to.

4 VICE CHAIR TIMMONS-GOODSON: Thank you.

5 CHAIRMAN CASTRO: Commissioner
6 Achtenberg?

7 COMMISSIONER ACHTENBERG: Ms. Lucas and
8 perhaps the other two attorneys as well, we heard
9 in the last panel from the representative of the
10 immigration project of the ABA that detainees, I
11 think specific to the family context, or it may
12 have been detainees in general, and you can correct
13 me as to which one it was, were six or seven times
14 more likely to have their asylum petitions granted
15 if they were represented by counsel. Does that
16 sound familiar?

17 I'm wondering—I recognize and it has
18 been pointed out a number of times that because
19 this is a civil proceeding and not a criminal
20 proceeding, albeit a distinction with a—without
21 some significant difference in my own view, but
22 we'll put that aside for a moment. And there is no
23 constitutional right, shall we say, to
24 representation by counsel.

25 However, it seems to me that a number

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1 of sins could be avoided if somehow we were in a
2 position to see to it that at least, you know,
3 families, mothers and children were somehow
4 consistently provided with legal representation.
5 And I'm wondering what kinds of legal theories have
6 been propounded by your organizations, either in a
7 court of law or cases that have been made to public
8 policy makers who have the ability to alter these
9 laws in appropriate ways?

10 I'm wondering what kinds of legal
11 theories you have that might aid us in examining
12 the merit to the claim that legal representation
13 would only have to go to those seeking—those
14 subject to criminal prosecution as compared to the
15 civil penalty that's involved in repatriation. If
16 you will?

17 MS. LUCAS: I can start.

18 COMMISSIONER ACHTENBERG: Please.

19 MS. LUCAS: A couple of things I would
20 say on that. First is that immigrants in removal
21 proceedings have a right to have counsel at their
22 own expense. It is not a right to appointed counsel
23 or counsel paid for by the Government, which is the
24 critical distinction between the criminal and the
25 civil context.

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1 And that is why the impediments to
2 meaningful access to counsel and meaningful
3 representation by counsel that we saw at Artesia
4 and continue to see at Karnes and Dilley, are such
5 a problem. Because when they do have pro bono
6 representation, or if in the rare circumstance they
7 can pay for representation, they have a right for
8 that counsel to be heard and to access that
9 counsel.

10 And the other thing that I'll say is
11 that, you know, from ALIA's perspective, there is
12 nothing in the INA, the Immigration and Nationality
13 Act, to prevent the Government from funding counsel
14 for immigrants in removal proceedings. And there is
15 a small pilot project that the Government does work
16 on now for unaccompanied children, the Americorp
17 Initiative.

18 COMMISSIONER ACHTENBERG: Um-hum.

19 MS. LUCAS: But we have advocated for
20 years for a much broader Government-funded counsel
21 for the most vulnerable populations in immigration
22 proceedings. And honestly, in immigration
23 proceedings, period.

24 CHAIRMAN CASTRO: I have a few questions
25 that I'll give—are you still going?

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1 COMMISSIONER ACHTENBERG: I was hoping
2 for a comment—

3 CHAIRMAN CASTRO: Oh, I'm sorry.

4 COMMISSIONER ACHTENBERG: Additional
5 comment from the other two attorneys.

6 MS. BONO: I don't have anything to add
7 other than to emphasize what I suspect you've
8 already heard, at least in part this morning. The
9 similarities between the judicial system in the
10 immigration context and the judicial system in the
11 criminal context.

12 COMMISSIONER ACHTENBERG: Yes.

13 MS. BONO: So, even though we have the
14 civil/criminal distinction, the concerns about the
15 constitutional rights of immigrants are still very
16 much the same.

17 CHAIRMAN CASTRO: Okay. Earlier today,
18 we heard from folks from both the Federal
19 Government as well as the private prison company,
20 CCA, about all these great policies that are in
21 place. And what's being done there to make sure
22 that these facilities are compliant and places that
23 are not going to result in the kind of abuse and
24 violation of rights that we've heard testified to
25 by other people.

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1 It seems to me that there is, as has
2 been said earlier, there's a big disconnect there.
3 You all are on the ground on this issue. What's
4 going on here? Why do we have one picture that's
5 being painted to us by those that are running the
6 prisons? And quite another picture being painted by
7 the individuals who are kept in those prisons?

8 MS. BONO: Well, in Texas we always say
9 you talk the talk, but can you walk the walk. And I
10 think it's very nice to have a policy on paper or
11 posted on the wall, but it's completely powerless
12 if it's not being properly enforced.

13 And I think a lot of the disconnect
14 comes from the shell game when this is part of a
15 Federal program, but implementation is occurring
16 through a private contractor. And a private
17 contractor that's used to—that runs its business
18 primarily for criminal correctional facilities. And
19 doesn't necessarily have the proper expertise and
20 background for the detention of women and children.

21 And so I suspect training—proper
22 training for facility employees and proper
23 supervision are big parts of the problem here.

24 CHAIRMAN CASTRO: Do either of you have
25 a question.

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1 MR. STACY: Yes. Well, as I said,
2 there's sort of two issues. One is, are the
3 policies that are in place adequate? And the PREA
4 standards that just went into effect in 2014, we
5 feel particularly in regards to transgender
6 detainees are inadequate to meet those needs, even
7 if they were being implemented fully.

8 At the same time, there's a question of
9 implementation. And I think cultural competency to
10 deal with LGBT detainees is a serious issue. And
11 then in particular when you deal with transgender
12 detainees it's an even more serious issue.
13 Especially when you think about the folks who are
14 on the ground actually detaining people and making
15 these decisions, there's certainly bias that creeps
16 in, quiet sometimes, not even subtly, but sometimes
17 more subtly.

18 But I think largely, there's a real
19 ignorance of how to appropriately handle a
20 transgender detainee. Just one example, if you have
21 a male facility and you bring a transgender woman
22 into that facility, first of all that's not an
23 appropriate placement right there. But people are
24 being placed in that situation.

25 But then to treat that transgender

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1 detainee, even in that inappropriate circumstance
2 and in that place where they probably shouldn't be,
3 you want to treat them with really, real serious
4 respect. Well, one factor is, what clothing are you
5 going to make them wear? All of the clothing that
6 is going to be at that male facility is going to be
7 male clothing. Right there, you're already not
8 treating that transgender detainee, transgender
9 woman, with the sort of respect that every—that the
10 policies require, that common sense requires and
11 that human decency requires.

12 So I think it's both, are the policies
13 adequate? And then, is the cultural competency
14 really even getting anywhere close to the depth and
15 breadth that it needs to be.

16 CHAIRMAN CASTRO: Ms. Lucas? I'll get to
17 you Commissioner, I've just got a few more
18 questions.

19 Well, to each of you, Ms. Hinojosa
20 earlier had mentioned in her presentation, this
21 concept of Mirandizing the immigrants. Because
22 right now, if someone is detained, they don't know
23 what rights they have. Ideally, someone will tell
24 them somewhere along the process. Obviously that
25 doesn't often happen.

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1 What do you all think about this idea
2 of providing the immigrants that are being detained
3 with knowledge of their rights right at the
4 beginning of that custody? And if so, if you think
5 it's a good idea, how would we actually go about
6 accomplishing that from your perspective?

7 MS. BONO: It's critical. Especially
8 because these women and children are coming from
9 countries where they don't have the same types of
10 constitutional rights. So it doesn't even—in their
11 minds, it's not even a possibility. It doesn't even
12 occur to them that they might have the rights that
13 we have in our Government, in our system.

14 And I'm sure Ms. Lucas has some points
15 on this, but I would also say to the extent that
16 that's provided, it's very important that it be
17 provided not only in Spanish, but in the indigenous
18 languages. Because as Ms. Lucas mentioned, that's a
19 very im—that's a very—it's been a large barrier to
20 these women getting access to what little few legal
21 services there are there in place.

22 CHAIRMAN CASTRO: Ms. Lucas?

23 MS. LUCAS: Yes, I would fully agree
24 with that. I think that giving any immigrant in
25 proceedings, at the border, in detention, knowledge

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1 of their rights is critically important. And there
2 are some good models for this.

3 Karen Grisez, who testified earlier,
4 talked about the Legal Orientation Program. We
5 fully support that. Think it is a great thing. We
6 would also like it to be national.

7 I think, too, there is an obligation on
8 Border Patrol to do a better job with giving the
9 immigrants who are apprehended by border patrol an
10 understanding not only of their rights, but of
11 their obligations and their responsibilities. And
12 also to give it in the language that they can
13 understand.

14 Part of the problem with expedited
15 removal is that it's fast. And so the first moments
16 and the first contact that immigration enforcement
17 officers have with immigrants is critical. If an
18 individual does not express their fear, know that
19 they have the right to express their fear. Know
20 what's going to happen if they do express their
21 fear. If they don't know that as early on in the
22 process as possible, they—the avenue to asylum is
23 closed for them.

24 So, I would advocate for much more
25 information as early as possible.

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1 CHAIRMAN CASTRO: But would this need to
2 be done by legislation? Or could it be done in your
3 opinion by Executive Order by the President?

4 MS. LUCAS: I do not think it would have
5 to be done legislatively at all. I think this is
6 well within the Administration's authority to
7 create new protocols.

8 And also to expand the Legal
9 Orientation Program to get NGOs into Border Patrol
10 facilities so they can meet with individuals who
11 are being held in the short-term detention
12 facilities. And that they can, as individuals who
13 are not affiliated with the Government, have much
14 more honest conversations and productive
15 conversations with the detainees.

16 CHAIRMAN CASTRO: Thank you. Mr. Stacy
17 do you have anything?

18 MR. STACY: Yes. I just want to add to
19 that. I mean, I think it's really important to let
20 people know of their rights on the front end. But I
21 think also having third parties that can come in
22 and talk with them about their rights and help them
23 to understand that.

24 I mean, I think it's one thing to
25 inform people, and that's a good first step. But I

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1 think the additional steps are to really make
2 people understand that. And in the context of LGBT
3 detainees who are particularly vulnerable or have
4 experienced sexual assault, an additional level of
5 engagement with them, with a third party that they
6 can trust, is really critical to really getting
7 good outcomes.

8 CHAIRMAN CASTRO: Okay. Thank you.
9 Commissioner Yaki, you have the floor.

10 COMMISSIONER YAKI: Thank you very much,
11 Mr. Chair. I want to start off just by stating, and
12 maybe it's obvious, that there's a schizophrenia in
13 the way that the Obama Administration has dealt
14 with the issue of immigration in that you have—and
15 even in this particular situation, you have them on
16 the one hand saying we don't want this bed mandate.
17 We don't want the 34,000 bed mandate.

18 Yet, at the same time they're building
19 a 2,400 bed facility that, when it's not at full
20 capacity, is going to be under pressure to put more
21 people in them and probably exceed the 3,400 bed
22 mandate. It just—it's one of those things that kind
23 of drives me crazy about the Administration.

24 And in this particular instance, when
25 we talk—I kept on making this point earlier in the

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1 hearing, and that had to do with the fact that
2 these are families that we are talking about. This
3 is not—these are not hardened criminals. These are
4 not—these are people who, for reasons that they
5 need to be able to articulate, to whatever legal
6 standard we decide is applicable.

7 But nevertheless, there was a—there's
8 something compelling them to leave their native
9 land to come here and seek a better life. Whether
10 it was depression, whether it was fear of gangs,
11 whether it was fear of domestic violence. Whatever
12 it is.

13 And it bothers me that we have, in many
14 ways, criminalized them from the moment that they
15 walk across our border in a way that we did not do
16 when we were "flooded" with refugees from Europe or
17 "flooded" with refugees from Asia. They were not
18 met—they were not put in standard issue prison
19 jumpsuits for example, for their duration of the
20 stay, whether it was at Angel Island or Ellis
21 Island.

22 And I think what the Chairman said is
23 very important. And I think it's important for you
24 to articulate to us that, if the Administration
25 chooses to at least have this interdiction policy

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1 for families, they should at least realize that,
2 because they are families and there's a different
3 way we should deal with it, that it does—that there
4 is a—it should provide other safeguards for these
5 families that perhaps—you hate to single out
6 anything, but for this one I think it's warranted
7 because of these extraordinary circumstances.

8 If the Administration has the ability,
9 we need your help in looking at the law to help us
10 formulate these positions to provide for onsite
11 ALJs [administrative law judges]. That includes a
12 right to counsel, not just an ability to have
13 counsel, but a right to counsel that may be
14 subsidized or paid for with Federal dollars.

15 Because if we truly are interested in
16 doing an expedited process, then do it fairly. It
17 shouldn't be a one-way expedited process where,
18 basically, someone you know looks at you for a
19 couple of days. You come in, you're scared of this
20 person who is in whatever outfit. You're in your
21 orange jumpsuit, and you don't know what has
22 happened to you in the past few weeks or months
23 while you've been waiting.

24 And then your fate is decided. It's got
25 to be a better and even playing field if we're

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1 going to be true to those things that in our
2 country we have always been true to in terms of
3 family immigration to these United States.

4 So, we need your help in saying—looking
5 at the law and saying the President has the ability
6 through the Executive Order pen, which he's very
7 fond of right now, to provide these sets of
8 additional protections and safeguards for these
9 families coming across our border. And if you can
10 do that, that would be very, very helpful to us.

11 And I guess that was more of a speech
12 than a question. So, but if you have a reaction to
13 it, I would enjoy it.

14 MS. BONO: Well you know, obviously I
15 agree. Our values are expressed in the way that we
16 treat our most vulnerable. And we do have laws in
17 place to deal with populations who fear the threat
18 of persecution in their home countries. And the
19 Government is trying to circumvent those laws with
20 an expedited deportation process and a no-bond
21 policy for these families.

22 And so one place to start would be to
23 follow the law. And to follow the regulations that
24 are in place, which say that discretion must be
25 applied to determine whether or not these women

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1 pose a threat to public safety. And whether or not
2 they pose a flight risk.

3 And so one place to start is simply to
4 follow the INA [Immigration and Nationality Act]
5 provision that's already in place. Which says that
6 discretion must be applied. Right now, it's being
7 unilaterally withheld. And so, that's one very
8 basic place we can start without creating any new
9 guidelines or laws.

10 CHAIRMAN YAKI: Now, do they issue a
11 regula—did they issue a regulation suspending that
12 for this particular classification of folks who
13 came in? Or is this just sort of an unwritten
14 policy that you're seeing applied across the board?

15 MS. BONO: It's just a—it's a pol—it's
16 not a new regulation. It's just a policy that's
17 been created and applied.

18 CHAIRMAN YAKI: And I take it you folks
19 have probably filed a suit on that, I would assume?

20 MS. LUCAS: Why yes.

21 CHAIRMAN YAKI: Okay.

22 MS. LUCAS: I didn't personally. But
23 yes, there are others who have, so. The other thing
24 that I'll say—just a couple of things on that. So
25 the policy of having no bond or an exceptionally

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1 high bond in all of the cases is actually written
2 in the DHS affidavits in the packet that they
3 submit to the immigration judge when they're
4 opposing bond in a bond hearing.

5 So it is—there are places in which it
6 is expressed. That's not a regulation, but it is
7 written down. And the other thing is that I take
8 your point about the disconnect between some of
9 what the Administration is doing with Executive
10 authority and the policy that seems to be in place
11 for families.

12 COMMISSIONER YAKI: Yes, and just to
13 interrupt you just slightly. I mean, I understand
14 that the pressure that the Administration is under
15 in these situations. But I just think that they
16 reacted in such a way, way over to the other side.
17 There's still a way with the wave of the magic pen
18 in the Oval Office to balance it a little bit more.

19 I mean, I'd rather there not be any at
20 all. But I understand that the politics of the
21 Congress are such that the President's ability to
22 do that is somewhat constrained. But to the extent
23 that he still has that ability, he can make it a
24 little—make it a fair fight.

25 MS. LUCAS: Absolutely, he can make it a

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1 fair fight. But also even in the new memoranda that
2 came out of Executive action in November, there is
3 the section in the enforcement memo on detention
4 policy and discretion that should be applied with
5 respect to particularly vulnerable populations in
6 detention.

7 And nursing mothers, primary care
8 givers, they are all part of existing DHS policy
9 favoring release. All the Administration would have
10 to do is act on that, even with respect to these
11 families.

12 CHAIRMAN CASTRO: I'm going to move on
13 now to the Vice Chair followed by Commissioner
14 Kladney.

15 VICE CHAIR TIMMONS-GOODSON: Thank you
16 again, Mr. Chair. And this is open to all. On the
17 issue of the right to counsel of our most
18 vulnerable populations, I was reflecting on the
19 fact that in the civil context, we have throughout
20 this nation a system set up where, in children less
21 than 18 years of age that are alleged to be abused,
22 neglected, or dependent, petitions are filed, and
23 they are entitled to counsel.

24 And so I'm just wondering if there has
25 been any exploration of that angle? I think an

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1 argument could be made that these young people,
2 these families, the children are abused, neglected,
3 or dependent. What is there to stop State
4 Department, Social Services, or even counsel from
5 filing just such a petition? And in most instances
6 they would be entitled to counsel.

7 And I was just wondering, has any
8 thought been given to that way of proceeding or
9 that analogy? Or is there something that we can
10 learn in that context?

11 MS. BONO: At the beginning of this
12 process, when we were looking at some of the
13 conditions that made the environments unsafe and
14 potentially dangerous for children, members of our
15 working group did have conversations with the Texas
16 Department of Health and Public Safety. And the
17 individuals that we spoke with told us that,
18 because these women and children were in Federal
19 custody, it wasn't really a State issue.

20 But from our perspective, when you look
21 at the State statutes governing licensing and
22 childcare, certainly there are some potential, or
23 there's an area for potential violations here. And
24 again, that's the problem that we have with this
25 shell game. That we are talking about a Federal

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1 custody situation, but these are children who would
2 otherwise be protected by laws that are already in
3 place.

4 And I agree, it's a substantial and
5 disturbing disconnect.

6 MS. LUCAS: And what I would say on that
7 is that there are—I can't agree more that there are
8 very strong arguments for Government-funded
9 counsel, a right to Government-funded counsel in
10 the immigration context. No question.

11 Either because of the particular
12 vulnerabilities of the individual or because of the
13 dire consequences of the outcome of immigration
14 proceedings. In the criminal context, there are of
15 course very dire consequences what the outcome of
16 your criminal proceeding is. With deportation
17 proceeding, same thing.

18 You know, we're talking about people
19 who have been fleeing for their lives. And the
20 question is, do they get returned to a situation in
21 which they may be killed or not? That is a very
22 weighty consequence. And of course, our Supreme
23 Court has recognized that in *Padilla*.

24 And so, you know, in the criminal
25 justice context, it is now a constitutional

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1 obligation for defense counsel to advise their
2 clients about the immigration consequences of their
3 plea. Or, the immigration consequences of their
4 case, precisely recognizing how dire immigration
5 consequences can be.

6 So, we're on the way. And I welcome any
7 support for pushing the Administration on
8 Government-funded counsel.

9 CHAIRMAN CASTRO: We'll now move on to
10 Commissioner Kladney, followed by Commissioner
11 Heriot.

12 COMMISSIONER KLADNEY: Thank you. During
13 lunch we did speak, a couple of us spoke about
14 getting a statement of rights together to give to
15 these folks. And just before Mr. Stacy left us,
16 that's what I asked him to do and get us that
17 information.

18 I would ask both of you to please do
19 that. And I would also ask the folks who are on the
20 next panel to do that. And maybe we can combine
21 your submissions and maybe we can get a majority of
22 the Commission to recommend that.

23 Not being an expert in immigration or
24 deten-well, I do know about detention. But, not in
25 this, this concept. But if we could do that, I

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1 think that would be great.

2 And so if you could write those up, and
3 I would assume send them, I guess we should send
4 them to whom Mr. Chairman?

5 CHAIRMAN CASTRO: Office of Civil Rights
6 Evaluation here at the Commission.

7 COMMISSIONER KLADNEY: Okay. Thank you.
8 That's all I have.

9 CHAIRMAN CASTRO: Commissioner Heriot?

10 COMMISSIONER HERIOT: Thank you Mr.
11 Chairman.

12 CHAIRMAN CASTRO: You're welcome.

13 COMMISSIONER HERIOT: Ms. Lucas, I'm
14 curious about the numbers here, and maybe you can
15 help me. You mentioned that some of the detainees,
16 I'm not sure if you were talking about Karnes and
17 Dilley in particular, or about similar facilities.
18 But some detainees actually do have attorneys that
19 they've retained themselves. Some have pro bono.
20 And some of course have no attorneys at all.

21 Can you give me a sense of how common
22 it is to be able to pay for your own attorney? And
23 how many—more importantly, how many have pro bono
24 attorneys? How many have no attorneys at all?

25 And of those that have pro bono, how

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1 did it get decided which detainees would end up
2 with pro bono attorneys and which would not? I
3 mean, is it through things like "Know Your Rights"
4 seminars that they're able to filter the attorneys
5 to the strongest cases? Or, are there more informal
6 mechanisms that are at work here?

7 MS. LUCAS: Great questions. Okay. So, I
8 do not know how many of the family detainees in the
9 family detention system have counsel. That—I mean,
10 ICE would need to—well, ICE wouldn't even know
11 that. I'm not even sure—

12 MS. BONO: Yes, I was going to say the
13 first step might be a requirement that that
14 information be documented.

15 MS. LUCAS: Absolutely.

16 MS. BONO: Because I am not aware of a
17 place where I could Google or look to find that
18 information out.

19 MS. LUCAS: We do know from studies that
20 have been done that I referenced in my written
21 testimony, in 2009, 80 percent of detainees, the
22 currently detained population in immigration
23 detention, did not have counsel. So we're talking
24 about a huge number. Most detainees, immigration
25 detainees, never get counsel. So, it's a really

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1 serious problem.

2 In terms of how individuals in
3 detention do get counsel, there are a couple of
4 different ways. There is the traditional model, for
5 lack of a better word, which is through a Legal
6 Orientation Program that does screen individuals
7 who have for potential relief, potential avenues of
8 relief. And then those cases are referred out to
9 private attorneys who are willing to take on the
10 case pro bono.

11 The Artesia model, which our
12 organization was involved in, was a completely
13 different model from any other pro bono legal
14 services model. We went in and said, any woman who
15 wants representation will get it. And the effort
16 was enormous and gratifying and unlike anything
17 I've ever seen.

18 That is very unusual. And we had
19 amazing outcomes for the women and children in
20 Artesia. But again, all of our hearts break at the
21 thought of how in the world we are going to help
22 the women in a facility the size of Dilley.

23 COMMISSIONER HERIOT: Thank you.

24 CHAIRMAN CASTRO: I have a few more
25 questions. Earlier, we were talking about, you

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1 mentioned the shell game, right? Now let's say we
2 get—we're successful and we get folks their rights
3 read to them early on and have lawyers that will be
4 either provided to them pro bono or somehow paid.

5 Yet, we'll still see possibly this
6 other shell game where clients are moved from
7 facility to facility even though they have lawyers
8 and their lawyers can't talk to them because they
9 don't—may not know where they are. They may be too
10 far away.

11 Could you speak a little bit to that
12 issue and the impact it has on those folks who
13 actually are lucky enough to be represented?

14 MS. LUCAS: Absolutely, I can start. My
15 only—and I know our attorneys see this outside of
16 the family detention context as well. But in the
17 family detention context, I will say that the
18 closure of Artesia and the movement of currently
19 detained individuals from Artesia to Karnes and
20 some eventually to Dilley, but mostly initially to
21 Karnes, was completely confusing.

22 Our attorney—our lead attorney only got
23 notice of a handful of those transfers before they
24 would happen. And it—we would get notice on a
25 Friday night of transfers that might happen

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1 Saturday morning, might happen Monday, not exactly
2 sure.

3 It took our attorneys a long time to
4 find out where their clients were, and when they
5 got to the facility and were told that they had
6 been released, some of them. Some of them were
7 still detained obviously, some of them had been
8 released.

9 But the question with respect to folks
10 who had been released was, on what grounds? Were
11 they RORed? Were they paroled? You know, what—were
12 they deported? What is the legal circumstance in
13 which they found themselves?

14 It created a great deal of fear for our
15 clients because they did not know how to reach
16 their attorneys to tell them that they were being
17 transferred. Or, once they were in a new facility,
18 they didn't know how to reach them. And it
19 obviously interferes with the legal representation
20 that we're giving our clients.

21 CHAIRMAN CASTRO: And I know you
22 probably don't know the answer to all the transfer
23 reasons, but do you have any idea why some of those
24 transfers were happening?

25 MS. LUCAS: Well these particular

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1 transfers were happening because they were winding
2 down Artesia.

3 CHAIRMAN CASTRO: Okay.

4 MS. LUCAS: So they were closing
5 Artesia, and the currently detained population
6 needed to be moved. Some of them had hearings that
7 were scheduled for the weeks during which the
8 transfers were going to be happening. And so we
9 were able to negotiate a pace for those transfers
10 that would allow the individuals to keep their
11 merits hearings.

12 But that took a lot of work. And there
13 was a lot of confusion in that process.

14 CHAIRMAN CASTRO: How about in the non-
15 Artesia settings outside of the family detention?
16 Do you know of any of those?

17 MS. LUCAS: I know that it is a problem.
18 But I don't have any direct knowledge to speak to
19 it.

20 MS. BONO: It's incredibly expensive in
21 the non-family context for an individual to pay for
22 an attorney when their case gets moved out to New
23 York, for example, or Atlanta. And so inevitably,
24 that individual is in a situation where they have
25 to seek counsel in their new location.

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1 CHAIRMAN CASTRO: Right.

2 MS. BONO: And that not only creates
3 incredible cost, but also potential delays on the
4 case. And inefficiencies in the case; you create a
5 rapport and a relationship with your counsel, and
6 all of a sudden you're in the position where you
7 have to start at ground one.

8 It's especially problematic when there
9 are hearings already set in a short time period and
10 that individual is faced with finding new counsel
11 in an incredibly short time period.

12 CHAIRMAN CASTRO: And what I'm trying to
13 get at here is, you know, are there unjustified
14 reasons for these people being moved around, making
15 it more difficult for their counsel to represent
16 them? And perhaps another thing we could look at is
17 prohibition on moving individuals who either have
18 counsel or who may be close to a time of an
19 important hearing.

20 Is there any discussion, or have you
21 heard of any initiative such as that that have been
22 bandied about?

23 MS. BONO: One place—I think one place
24 to start might be to see if we can find numbers or
25 statistics that talk about why individuals are

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1 transferred. Again, I'm not even sure if that
2 information exists. But that definitely would be
3 one place for us to start.

4 CHAIRMAN CASTRO: Okay. And the last
5 question I'm going to ask, and I'll see if there's
6 anyone else who wants to ask anything. Commissioner
7 Kladney does.

8 We've talked a lot today, both this
9 morning and now about the things that aren't going
10 right at Federal facilities, either those that are
11 Government run or run by for-profit companies. But
12 what are the things that they're doing right?

13 Are there some best practices out there
14 that you've seen, whether in a particular facility
15 or in a particular issue that we might want to know
16 about so that we can try to recommend their
17 replication?

18 MS. BONO: You know, in 2009 when the
19 Hutto Facility was closed in the face of a very
20 controversial lawsuit and public outcry, the public
21 accounts of the environment for the families at
22 that detention facility, I think it's safe to say
23 they differed very, very greatly from what we've
24 seen at Karnes.

25 For example, there are no more orange

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1 jumpsuits. Families are allowed to go outside. Not
2 always at their own will, but there are certainly
3 periods of the day when they're allowed to go
4 outside. The children are provided with schooling.

5 From what I understand, children are
6 evaluated. Now, whether or not that evaluation is
7 sufficient, we can't say because we haven't had
8 access to those evaluations. But children are
9 evaluated in some manner and put into age-
10 appropriate classrooms through some type of
11 contract with the charter system.

12 There are toys. There's a common area
13 with toys. It's difficult, you know, I—one client
14 who I had some interaction with would talk about
15 how every Friday, the families who were being
16 released would line up. And her son would wait in
17 line to be released. And the guards would stop him
18 right before they got out. He was five.

19 Whether or not you have a classroom,
20 whether or not you have an outdoor facility, at the
21 end of the day this is a prison-like environment.
22 And the kids know that they are in prison. That
23 they are being detained. This is not an environment
24 where children and families should be, especially
25 when they don't pose a risk to public safety.

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1 CHAIRMAN CASTRO: Okay. Ms. Lucas?

2 MS. LUCAS: Sure. A couple of things
3 that come to mind outside of the family detention
4 context, but in the broader detention context.

5 One is that a couple of years ago, ICE
6 developed what they call their risk classification
7 assessment tool. It is a computerized tool with a
8 lot of questions and inputs trying to get at public
9 safety and flight risk. Which are the two criteria
10 that you should be using to determine whether
11 someone should be detained.

12 It's not perfect. But it was a great
13 idea. And it helps in a lot of circumstances to
14 quantify some of these—excuse me, sorry. To
15 quantify some of the risks. And we would recommend
16 that the RCA be used much more broadly.

17 It's not currently used in family
18 detention for example. And unfortunately, in the
19 RCA [Risk Classification Assessment], it cuts out
20 the 60 percent of the currently detained population
21 that is under what ICE considers to be mandatory
22 detention. So, we would recommend changing the RCA
23 to help those folks.

24 And the other thing that I can think in
25 terms of best practices that might be helpful for

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1 you to look at is not necessarily in the ICE
2 context, but in the broader, civil, pretrial
3 confinement world. There's a lot of best practices
4 in law enforcement with respect to alternatives of
5 detention.

6 And we have been urging ICE to look at
7 those best practices. And use much more robust
8 alternatives to the detention program.

9 CHAIRMAN CASTRO: Thank you.
10 Commissioner Kladney? I think you'll have the last
11 question.

12 COMMISSIONER KLADNEY: Thank you very
13 much Mr. Chairman. I think Ms. Bono just said about
14 that we don't know if they're evaluating the
15 children right because we can't get the
16 information. And so, my question is, is obvi—and I
17 think I question that the answer is obvious.

18 Should we recommend that ICE and the
19 Government release compliance records to the
20 public? Or make them more transparent?

21 MS. LUCAS: Yes. Absolutely. There's a
22 lot of data and information about how detainees are
23 treated. And even just basic information about when
24 and how they are detained, that it would be
25 wonderful if the Commission were to weigh in on

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1 that and make the recommendation that those be made
2 public.

3 COMMISSIONER KLADNEY: Do you agree with
4 that, Ms. Bono?

5 MS. BONO: Yes. Our experience is, when
6 we send requests under FOIA, it can take some—it
7 can take many months, sometimes up to a year to get
8 anything that looks even remotely close to complete
9 records, if we're lucky enough to get that.

10 And the delay, of course, is what's
11 critical here because of the expedited removal
12 process. By the time we get information that we can
13 act or move on, a lot of families have already been
14 cycled through the process.

15 COMMISSIONER KLADNEY: And Ms. Lucas, my
16 final, final question, Mr. Chairman. Final, final.

17 CHAIRMAN CASTRO: Okay.

18 COMMISSIONER KLADNEY: Commissioner,
19 when you were responding to—at least I'm not making
20 a speech, Mr. Chair. When you were responding to
21 Commissioner Heriot's question about no one knows
22 why, who, what, when, where, how you get a pro bono
23 counsel or whatever. And you said 80 percent do not
24 have counsel. You said your project at one time
25 gave everybody representation at Karnes. I believe

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1 that was the quote.

2 During that period of time, what was
3 your success rate and failure rate in terms of
4 detention? And in staying in the United States?

5 MS. LUCAS: Great question. So what I
6 said was the—it was at Artesia, it was not at
7 Karnes.

8 COMMISSIONER KLADNEY: Oh, I'm sorry.

9 MS. LUCAS: And we did not represent
10 every woman. We said that we would represent at,
11 you know, whatever stage of the proceeding they
12 needed, anyone who wanted representation. Anyone
13 who sought representation.

14 COMMISSIONER KLADNEY: Okay. That would
15 be a lot, right?

16 MS. LUCAS: So, there were many people
17 at Artesia who didn't have counsel, and I don't
18 know who they are because our project didn't
19 interact with them. So there's a sort of blind spot
20 in my knowledge about those people in Artesia.

21 What I will say is that 15 of our
22 Artesia cases have gone to the final merit stage in
23 their asylum or related relief. You know, this is
24 the make-or-break moment. Do you get asylum, or do
25 you not get asylum? And we won 14 out of the 15 so

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1 far. So we have a very high success rate.

2 But I think what it speaks to, quite
3 frankly, is the importance of counsel. But also the
4 truth of the violence that these women are facing
5 back home.

6 COMMISSIONER KLADNEY: Thank you very
7 much.

8 CHAIRMAN CASTRO: I want to thank both
9 of you for your testimony and, in absentia, Mr.
10 Stacy. And before I call on Panel III, I just want
11 to take a point of personal privilege and say it's
12 really good to see Ms. Bono here.

13 She graduated from my law school many
14 years after I did. But was one of the scholarship
15 recipients for our Juan Tienda Scholarship. And I'm
16 very proud of what you're doing. So thank you.

17 MS. BONO: Thank you Chairman.

18 **V. PANEL IV - CIVIL RIGHTS ASSOCIATED WITH**
19 **IMMIGRATION DETENTION CENTERS**

20 CHAIRMAN CASTRO: Thanks. Now, I'll ask
21 Panel III to make—Panel Four to make your way up
22 here as Panel III departs.

23 All right, we've got our panelists all
24 in place. Our Commissioners, I believe, are all
25 still in place. So we're going to begin with Panel

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1 IV.

2 First of all, thank you all for coming.
3 And I think you all know, I think most of you have
4 been here all day, the system of warning lights.
5 You have seven minutes to speak. Green go, yellow
6 slow down, I mean speed up, and red stop.

7 So, before we proceed, I want to
8 introduce each of our panelists. Our first panelist
9 is Carl Takei, staff attorney for the American
10 Civil Liberties Union here, representing the ACLU.

11 Our second panelist, Mr. Bob Libal,
12 Executive Director of Grassroots Leadership. And
13 our third and final panelist is a dear friend from
14 Chicago, Mary Meg McCarthy, Executive Director of
15 Heartland Alliance's National Immigrant Justice
16 Center.

17 I'll ask the three of you to raise your
18 right hand and be sworn. That you affirm that the
19 information that you are about to provide to us is
20 true and accurate to the best of your knowledge and
21 belief. Is that correct? Yes? Okay, good.

22 Mr. Takei?

23 MR. TAKEI: Good afternoon and thank you
24 Mr. Chairman and members of the Commission. ICE
25 detention is a sprawling network of 34,000

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1 detention beds in approximately 250 facilities
2 which are composed of Federal facilities, county
3 jails, and private prisons.

4 Immigration detention is intended to be
5 civil and non-punitive. Its purpose is not to
6 punish, but simply to secure appearance at
7 immigration proceedings and transport for removal
8 when applicable.

9 In practice, however, ICE detention
10 facilities overwhelmingly consist of jails and
11 jail-like facilities. Almost half of ICE detainees
12 are literally kept in jails.

13 Although my remarks today focus on ICE
14 detention, my written statement also addresses the
15 short-term custody facilities, often referred to as
16 *ilitas*, operated by Customs and Border Protection.
17 CBP has a serious need for greater accountability.

18 The scale of its short-term detention
19 system is unknown. The standards governing
20 conditions are not public. And oversight authority
21 within the agency is unclear. My written testimony
22 identifies specific oversight and transparency
23 mechanisms that the Commission can push CBP to
24 implement.

25 Since others have commented extensively

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1 on the Obama Administration's cruel and unnecessary
2 policy of detaining Central American immigrant
3 families, I will just emphasize one of the
4 inevitable consequences of this policy. Something
5 that was only announced publically by Ms. Lucas
6 today.

7 Next week, a baby girl in an ICE family
8 detention facility will turn one month old. She and
9 her mother have been in Homeland Security custody
10 since she was 11 days old.

11 The Administration's decision to
12 massively expand the detention of immigrant
13 families with children means many more newborns,
14 toddlers, and young children will experience
15 milestones like this while incarcerated. The
16 Commission can play an important role by calling
17 for an end to these family detention policies.

18 When ICE does not implement its
19 detention reform initiatives consistently or across
20 all of its facilities, there are profound human
21 consequences. Sexual abuse, for example, is far too
22 common.

23 In 2013, the GAO found that detained
24 individuals faced severe challenges in reporting
25 sexual abuse. And although DHS did issue

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1 regulations to implement PREA in 2014, they set no
2 deadline for implementation at almost half of all
3 ICE facilities, or, excuse me, all ICE detention
4 beds.

5 The Commission can use its power to
6 push ICE to both swiftly implement the PREA rule
7 across the board and cancel contracts that fail to
8 comply. Just inserting PREA language into facility
9 contracts isn't enough, though. Here is one recent
10 example that has not yet received coverage beyond a
11 small local newspaper.

12 Just two weeks ago, a Pennsylvania
13 District Attorney filed criminal charges against a
14 guard at Berks Family Detention Facility for seven
15 counts of institutional sexual assault. The victim,
16 I'll call her Jane Doe, is a 20-year-old woman,
17 who, according to her immigration attorney, fled
18 from Honduras with her three-year-old son after the
19 boy's father beat her severely enough to cause a
20 miscarriage, raped her in front of her son, and
21 threatened her with torture and death.

22 When she was sent to Berks, a guard
23 gave favors to her and her son and told her that he
24 could help her with her immigration case. When he
25 initiated sex with her, she did not feel

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1 comfortable saying no.

2 Because a guard can exercise so much
3 control over the daily life of the detained person,
4 including when she can eat, when she can sleep, and
5 when she can be punished, notions of consent have
6 little meaning in this context. That is why PREA
7 treats any sexual contact by a guard as a form of
8 sexual abuse regardless of apparent consent.

9 But authorities at Berks did not
10 understand this rule. Rather than educate the women
11 at Berks about their rights under PREA, the
12 facility staff announced new victim-blaming
13 policies against wearing tight or revealing
14 clothing. Ultimately, the blame for this grossly
15 inappropriate response must fall on ICE for failing
16 to ensure that the facility staff understood and
17 complied with PREA's mandate.

18 Now, ICE deserves credit for
19 implementing and developing the 2011 performance
20 based National Detention Standards, which Mr. Landy
21 described earlier. These represent major advances
22 over ICE's prior detention standards.

23 The pace of implementation, however,
24 has been disappointing. In October 2014, GAO found
25 that almost half of ICE's detention beds, which

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1 constitute 85 percent of the facilities that ICE
2 relies on, are not held to these standards. On both
3 PREA and the 2011 standards, the Commission can
4 investigate what implementation work ICE has done
5 and make recommendations for a firm deadline for
6 completion.

7 Finally, I wish to register the ACLU's
8 concern about the widespread use of solitary
9 confinement in ICE detention. In 2013, ICE took a
10 laudable and important step by issuing a new
11 segregation policy directive. The key question,
12 however, is whether that policy directive is
13 working as contemplated and whether ICE is using
14 the information that it now collects under the
15 directive to reduce the use of this inhumane
16 practice.

17 That remains unanswered. ICE has not
18 made any information publically available that
19 would allow us to evaluate the agency's progress in
20 implementing the directive.

21 In sum, Ice has made has made
22 significant progress by adopting new regulations on
23 sexual abuse, solitary confinement, and detention
24 standards generally. But issuing better policies is
25 only the first step in reforming a sprawling

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1 detention system whose shortcomings continue to
2 result in serious, inhumane, and unconstitutional
3 consequences.

4 The agency must devote sufficient
5 resources to implementing these policies and making
6 these efforts transparent to the public.
7 Additionally, they Department must dramatically
8 reduce the size of the detention system. Ending the
9 unnecessary use of detention and making much
10 greater use of effective, humane alternatives can
11 assist ICE's detention reform goals by rendering
12 significant numbers of detention facilities
13 unnecessary.

14 Thank you for your time.

15 CHAIRMAN CASTRO: Thank you. Mr. Libal?

16 MR. LIBAL: Well, I also want to thank
17 the Commission for taking on this important and
18 very timely issue. My remarks will focus mostly on
19 conditions in civil detention centers contracted by
20 Immigration and Customs Enforcement in my State of
21 Texas. Because we have more immigration detention
22 beds than any other State.

23 However, I do want to note that the
24 criminal prosecution of migrants, mostly along the
25 border, has resulted in what can really be

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1 considered a shadow immigration incarceration
2 system that runs parallel to the civil immigration
3 system. In fact, since the initiation of the
4 Operation Streamline Program along the border, two
5 immigration charges have become the most prosecuted
6 offenses in the entire Federal court system,
7 accounting for more than 90,000 criminal
8 prosecutions in 2013.

9 In the last 30 years, it's been noted
10 the number of people held in the civil immigration
11 detention system has exploded from just a few
12 hundred in the early 1980s to more than 33,000
13 people detained on average each day last year.
14 Individuals in our nation's civil detention system
15 include asylum seekers, women with children,
16 parents of U.S. citizen children, long-time legal
17 permanent residents, and recently arriving
18 migrants.

19 For the past five years, as has been
20 discussed today, a detention bed quota has required
21 that ICE maintain a baseline number of immigration
22 detention beds. Today, 34,000 on any given day. In
23 Texas, we've observed ICE setting bond
24 determinations for individuals in order to keep
25 detention facilities full, ostensibly to meet the

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1 quota.

2 The detention system is also
3 increasingly operated by just a handful of for-
4 profit private prison corporations that exert
5 tremendous influence in the development and
6 operation of the detention system. Just two
7 companies, the Geo Group and Corrections
8 Corporation of America, operate eight of the ten
9 largest civil immigration detention facilities in
10 the United States. And nearly 60 percent of all
11 immigration detention beds are now operated by for-
12 profit prison corporations.

13 ICE's ability to cancel contracts with
14 said companies is therefore very limited. Even when
15 multiple cases of abuse that have led to criminal
16 prosecution of detention center staff, the agency
17 has been reluctant or unable to cut contracts with
18 bad actors.

19 I'll also note from this morning's
20 conversation that the use of labor within
21 facilities, immigrant labor is actually widely used
22 in both private and publically operated immigrant
23 detention facilities in order to service the
24 facilities themselves. And it's the common practice
25 to pay one dollar for a five-hour shift. So

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1 basically, one dollar per day within these
2 facilities.

3 Unfortunately cases of abuse and
4 misconduct are far from uncommon. Poor conditions,
5 sexual assault cases, and allegations of abuse have
6 plagued detention centers in Texas. We toured the
7 privately operated Polk County Detention Center in
8 Livingston, Texas, in both 2012 and 2013 and found
9 conditions that included inadequate medical care,
10 lack of access to legal services, and the absence
11 of any meaningful programming at all.

12 Men lived in cramped dormitories,
13 eating, sleeping, using the bathroom, and spending
14 up to 23 hours a day confined in their cells with
15 eight other men. Similar conditions at the nearby
16 Joe Corley Detention Center in Conroe, Texas,
17 operated by the Geo Group, led to a hunger strike
18 in March of last year.

19 At least five detention centers in
20 Texas have seen allegations of sexual assault in
21 recent years. In some cases with multiple assaults
22 reported at the same facility.

23 Only at the Willacy County Detention
24 Center, which Ms. Hinojosa spoke about this
25 morning, did ICE actually end its contract in 2011.

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1 However, a month later, the Federal Bureau of
2 Prisons entered into a contract to reopen the
3 facility for incarcerating immigrants, many of whom
4 convicted of reentering the country after
5 deportation.

6 We also I think like everyone, have
7 very serious concerns about the policy of detaining
8 immigrant families, including little children, en
9 masse. We were involved in a campaign between 2006
10 and 2009 to successfully convince the
11 Administration to largely end that policy by
12 stopping family detention at Hutto.

13 However, the number of family detention
14 beds has exploded in recent years from—in recent
15 months from under 100 last year to what will be
16 more than 3,500 at a pair of remote private prisons
17 in South Texas, Karnes and Dilley.

18 We've heard today that even after
19 families pass their credible fear interviews, that
20 they are not granted bond or otherwise released. A
21 practice that is common with adults without
22 children. Attorneys in Texas have dubbed this the
23 Mommy Penalty.

24 Already, many of the same problems that
25 we saw at Hutto have reemerged. In September,

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1 Grassroots Leadership and other groups toured the
2 Karnes Detention Center and spoke with more than a
3 dozen women there. And we subsequently joined a
4 complaint to DHS's Office of Civil Rights and Civil
5 Liberties documenting conditions that included
6 children losing weight due to stress and inadequate
7 nutrition. Unreasonable restrictions on the
8 movement of children include disallowing infants
9 from crawling.

10 A high number of male guards is a
11 particular concern given that many of the women
12 detained at Karnes have experienced sexual
13 violence; the history of sexual assault within
14 immigration detention facilities; and threats of
15 punishment against women and children at the
16 facility, including threats of separation of
17 children from their parents.

18 No meaningful response to this
19 complaint has been received to date. And as you
20 have heard, Ms. Bono talked about the allegations
21 of sexual assault and the lack of meaningful
22 response to that complaint as well.

23 Even a seven-year-old with brain cancer
24 could not escape ICE's detention dragnet. Sara
25 Beltran and her seven-year-old daughter, Nayely,

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1 fled violence in El Salvador and were detained at
2 Karnes.

3 They passed their credible fear
4 interview, but ICE would not release the family,
5 nor provide Nayely with the treatment she needed,
6 even after doctors wrote to ICE expressing concern
7 that her life may be in danger. It was only after
8 her attorney contacted us and other organizations
9 in Texas and went to the media that Nayely was
10 finally released.

11 Sara and Nayely's case, I think,
12 highlights the problems with a system that puts
13 detention as a first option and not a last. And so
14 we make the following recommendations.

15 First and foremost, policy makers
16 should prioritize policies that would significantly
17 reduce the use of detention, including elimination
18 of the detention bed quota; and prioritization of
19 community-based alternatives to detention that are
20 the least restrictive possible.

21 That holds doubly true for families.
22 ICE should end the practice of detaining immigrant
23 families, immediately end its no-bond policy for
24 families, and work to close rather than expand the
25 Karnes and Dilley Detention Centers.

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1 And further, the Government should
2 reduce its reliance on for-profit prison
3 contractors, including ending contracts at
4 facilities with a record of abuse and penalizing
5 contractors found to have multiple incidents of
6 abuse and mismanagement in their facilities.

7 Thank you.

8 CHAIRMAN CASTRO: Thank you Mr. Libal.
9 Ms. McCarthy?

10 MS. MCCARTHY: Good afternoon. Thank you
11 for this opportunity Mr. Chairman and members of
12 the Commission.

13 Let me just tell you briefly a little
14 bit about our organization, which makes us somewhat
15 unique. We represent approximately 10,000
16 immigrants, refugees, and asylum seekers in our
17 office. So we have an office in Illinois, Indiana,
18 and one in DC.

19 Our direct representation is what
20 informs our advocacy and our impact litigation. My
21 testimony—written testimony includes a number of
22 case examples, which are experiences that we've had
23 in representing individuals, including the
24 survivors of human trafficking who are detained.

25 Earlier this morning, there was

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1 reference to some complaints that we've filed with
2 the Office of Civil Rights and Civil Liberties.
3 Since 2011, we have filed three complaints. The
4 most recent one, in November 2014, we have yet to
5 receive any response from the Office of Civil
6 Rights and Civil Liberties.

7 The first one was regarding treatment
8 of LGBTs in immigrant detention. The most—the
9 second one that was June 2014 was about the abuse,
10 documented abuse, of 116 children ages five to 17
11 years of age while in Customs and Border Protection
12 custody.

13 And the most recent one was November
14 2014 regarding the failure of the screening process
15 at the border to adequately ensure that those
16 individuals who were eligible to apply for
17 protection have that opportunity. And I'm happy to
18 discuss the recommendations that we set forth in
19 those complaints to the Office of Civil Rights and
20 Civil Liberty.

21 But what I'd like to focus my comments
22 on tonight is my colleagues, today my fellow
23 panelists, have really provided an excellent
24 detailed portrait of the current immigration
25 detention system, including the critical legal and

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1 civil rights concerns regarding lack of access to
2 counsel, lack of mental and medical healthcare, and
3 other civil rights challenges.

4 With that fresh in mind, I have chosen
5 to focus my comments on what I believe is one of
6 the major underlying causes of the system's
7 dysfunction: its sheer enormity. The Government
8 must stop detaining individuals who pose no threat
9 to society and are not flight risks.

10 It must stop using incarceration as a
11 default immigration enforcement tool and
12 discontinue policy making that relies on the
13 misguided perception that expanding detention
14 deters migration. It doesn't. Our clients have come
15 back after being detained because they could not
16 live safely in their home countries.

17 The primary means to responsibly reduce
18 the U.S. immigration detention system's dependence
19 on incarceration is to expand alternatives to
20 detention programs, also known as ATDs. The U.S.
21 Government must take a hard look at the population
22 it detains.

23 According to the UN High Commissioner
24 for Refugees, detention should only be used as a
25 measure of last resort for the shortest appropriate

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1 period of time. We cannot and must not consider
2 people, particularly families in detention, a fait
3 accompli.

4 Rather, the system must assess the
5 detention of each person. Many people in detention
6 are hard-working mothers and fathers whose
7 detention places tremendous emotional and financial
8 burdens on families, including punishing U.S.
9 citizen children.

10 For instance, in fiscal year 2012, an
11 estimated 152,000 U.S. citizen children's parents
12 were detained and/or deported. Those families were
13 destroyed. Further, many people in detention pose
14 no risk to public safety.

15 Between 2009 and 2011, more than half
16 of all individuals in detention had no criminal
17 records. Among those with the so-called criminal
18 history, nearly 20 percent were for misdemeanor
19 traffic offenses.

20 In 2014, as large numbers of children
21 and families began coming to the United States
22 seeking safety from violence in Central America,
23 DHS oversaw an unprecedented expansion of
24 immigration detention, including that of mothers
25 and children. As you've heard, if the

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1 Administration continues on its current trajectory,
2 by this spring it will have capacity to detain
3 about 3,800 mothers and children, an outrageous
4 increase from fewer than 100 beds for mothers and
5 children at the start of 2014.

6 NIJC rejects the Secretary of Homeland
7 Security, Jeh Johnson's, premise that detention is
8 a permissible and effective deterrent to Central
9 American migration. It is unlawful and immoral to
10 detain any person for the purpose of discouraging
11 the future migration of others. Moreover, as we
12 have observed among the thousands of children and
13 adult asylum seekers that we have screened in the
14 past year, the practice fails to deter.

15 DHS should jettison political
16 expedience as a basis for making detention
17 decisions and instead base custody on whether
18 individuals pose threats to public safety or flight
19 risks. Release on bond, recognizance, or other
20 alternatives to detention such as orders of
21 supervision, case management services, or ankle
22 monitors enable individuals and families to live in
23 an environment where they can begin to heal and
24 connect with legal and mental health services.

25 For more than a decade, we have

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1 advocated to reduce the unnecessary detention of
2 non-citizens, working directly with the Department
3 of Homeland Security to develop a risk assessment
4 tool. However, as recently reported by the UN High
5 Commissioner for Refugees, the agency warned that
6 while the risk assessment tool is an improvement on
7 what has generally been a detain first, ask later
8 policy, the tool is based on mathematical
9 calculations.

10 Risks become a bureaucratic tick-box
11 exercise, and many lead only to artificial
12 individual assessments rather than real ones. It
13 appears to be heavily weighted in favor of
14 detention. As a nation, we must restore due
15 process.

16 We spend \$1.44 billion annually
17 detaining people. We could do better. Thank you.

18 CHAIRMAN CASTRO: Thank you Ms.
19 McCarthy. We'll open it up for questions again.
20 I'll sort of lead off, and I'll look to my
21 colleagues to go next.

22 Mr. Takei, during the break in one of
23 the panels, you mentioned to me that you had some
24 comments about Mr. Corney of CCA's—Mr. Conry of
25 CCA's comments in response to my question about

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1 prison labor. Could you elaborate on that please?

2 MR. TAKEI: Yes. So I was struck by how
3 carefully worded Mr. Conry's response was. He told
4 you that CCA does not use detained labor for
5 outside contractors in ICE detention.

6 But as Mr. Libal just pointed out,
7 there are tens of thousands of people every day in-
8 well, every year in ICE detention facilities who
9 are working to mop the floors, cook the food, clean
10 the toilets. Basically, all of the work that is
11 required to keep the facility running, for about a
12 dollar a day.

13 This rate is something that was
14 originally developed for POWs and in fact was used
15 for the Japanese incarceration camps during World
16 War II. So it's ironic that we're talking about
17 this on Korematsu Day. But that rate has remained
18 the same without an adjustment for inflation since
19 World War II.

20 So you now have a situation where the
21 ICE detention system has effectively become the
22 largest employer of undocumented immigrants in the
23 United States.

24 CHAIRMAN CASTRO: And so what both of
25 you, Mr. Libal and Mr. Takei, are saying is that,

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1 in essence, these corporations like CCA are keeping
2 their costs down by employing their own prisoners
3 who are undocumented and paying them substantially
4 less than minimum wage. Because otherwise, they'd
5 have to go out in the marketplace and hire American
6 workers and pay them at least a minimum wage to do
7 this.

8 MR. TAKEI: Exactly. And you know, there
9 are benefits when you have a person in detention.
10 It is an excruciatingly boring experience if it's a
11 safe facility. Otherwise, it's a terrifying
12 experience. But in a safe, well-run facility, you
13 actually need to have something for people to do
14 while they're there to fill the days.

15 So it's valuable to have some sort of
16 labor program, but it shouldn't be a labor
17 exploitation program. If you're going to put people
18 to work inside detention, they need to be paid a
19 fair wage.

20 CHAIRMAN CASTRO: Um-hum. I'll ask you
21 all some of the same questions I asked the prior
22 panel. In terms of this idea that we're generating
23 about Mirandizing our—the detainees before—as early
24 in the process as possible, what are your thoughts
25 on that and how it can be best effected?

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1 MR. TAKEI: Well, let's see, with one
2 thing that I want to address is the right to
3 counsel.

4 CHAIRMAN CASTRO: Okay.

5 MR. TAKEI: And I think the earlier that
6 counsel can be introduced, the better. The ACLU,
7 along with a number of other organizations
8 including the American Immigration Counsel, the
9 Northwest Immigrant Rights Project, and the law
10 firm Kirkpatrick, Lockhart and Gates, is litigating
11 a case about the rights of children to have
12 appointed immigration counsel.

13 But you know, it—so that's attacking,
14 you know, the part of the problem where it is the
15 most Kafkaesque. But the other issue is ensuring
16 that people have a counsel at the earliest stage in
17 the process as possible.

18 And that's—that I think is probably the
19 best way to ensure that people's rights are
20 protected.

21 MS. MCCARTHY: Yes, I would agree. And I
22 think even from the study we did regarding border
23 screenings that was discussed earlier today with
24 the Customs and Border Protection Officer, at that
25 moment it's critical. [Here](#)

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1 And I think Karen mentioned this in
2 terms of the expedited removal process. People move
3 very quickly in and out. And that's what they tried
4 to do in Artesia with the mothers and children. And
5 before there were attorneys there, they were moving
6 and deporting hundreds of people.

7 So, I think it's really important at
8 that very first instance when someone encounters
9 law enforcement that they have access to counsel.
10 Or at least information regarding their legal
11 rights.

12 And I think it's more than just a
13 pamphlet. Because you don't know if they speak the
14 language or they understand the language. As has
15 been said a few times today, we have seen so many
16 more children with indigenous languages coming into
17 the system.

18 So, you can't just hand a child from
19 Guatemala a Spanish "Know Your Rights" booklet.
20 That is insufficient. And a child's going to have a
21 very hard time understanding. We have stick figures
22 in our Know Your Rights booklets for the children.
23 We've played games with them so that they
24 understand their rights.

25 So it's got to be more than just

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1 handing them a piece of paper.

2 CHAIRMAN CASTRO: Mr. Libal?

3 MR. LIBAL: And I would defer to my
4 attorney colleagues here on this largely. But you
5 know, it was our experience that some of the
6 facilities that we visited and that we have visited
7 over the years do have legal orientation programs
8 and know-your-rights trainings. And I think that's
9 helpful, but in no way sufficient.

10 Other detention centers in Texas have
11 no legal services at all. The Polk County facility
12 that we visited, no one, no NGO, no legal—no pro
13 bono law firm, no law school. No one [attorneys]
14 had been in that facility in 18 months when we went
15 in there.

16 So, people were getting no legal
17 orientation, no legal services at all. When asked
18 if they'd seen the video that I showed, this sort
19 of legal orientation video, that they show upon
20 sort of entrance into the facility, some of the
21 guys we visited remembered it. But most of them
22 were kind of like, "Yes, I don't know that. That
23 was just one of those things that they showed us."

24 So again, I think the legal orientation
25 programs and know-your-rights trainings are

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1 something. They're nowhere near as efficient. And
2 some of those facilities don't even have those.

3 MR. TAKEI: And I'll also add this. You
4 know, it's not just the ICE facilities. Typically,
5 if you're apprehended near the border, you end up
6 in a CBP *ilita* first. And these *ilitas*, the
7 physical outlet, the layout varies quite widely.

8 But typically, they're congregate
9 cells, they very rarely have a telephone that is
10 immediately accessible to the detainees, which
11 causes problems both with even telephoning some
12 sort of legal help line. And also, if they are
13 facing any sort of sexual abuse situation, to be
14 able to contact anybody without the assistance of a
15 guard.

16 CHAIRMAN CASTRO: Okay. Before I turn it
17 over to Commissioner Yaki, any best practices that
18 you all have seen out there in a particular
19 facility or any type of issue that you can share
20 with us that could be recommended for replication?

21 MR. TAKEI: The solitary confinement
22 policy directive that ICE issued in 2013 is a very
23 good policy. It's one of the few times that, when
24 it was announced, the ACLU simply applauded it. And
25 did not pair that with a critique.

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1 CHAIRMAN CASTRO: That is amazing.

2 MR. TAKEI: And as I said, the key
3 challenge is implementing it across the board and
4 making sure that they are transparent about what's
5 going on with that implementation. Because that
6 information has not been distributed in any way.

7 MS. McCARTHY: I want to talk about best
8 practices in terms of the Alternative Detention
9 Program. I think one of the questions raised is,
10 well, where are these mothers and children going to
11 go?

12 And we've seen in Chicago and other
13 parts of the country where they have created homes.
14 The Sisters of Mercy have really been at the
15 forefront of this in terms of providing residential
16 facilities really from the community to help women
17 and children, and men for that matter, who are
18 released from detention.

19 So I think the Alternatives to
20 Detention Programs can function. And that there are
21 some best practices in terms of case management
22 systems and support for these individuals while
23 they're going through the immigration court system.

24 So I think we've got a lot of resources
25 that don't require best practices in detention. I

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1 would add one other piece too, which is Sisters of
2 Mercy. They fought long and hard to get into the
3 detention facilities, county jails in the Midwest
4 to do pastoral care services.

5 And that has been a really good program
6 and a best practice. Not only while people are
7 detained, but at the point of deportation. They've
8 gone out to the Broadview Detention Center that
9 then buses people to the airport. And that's been
10 very, very effective and meaningful both for those
11 individuals being deported as well as their
12 families.

13 MR. TAKEI: I join everything that Mary
14 Meg has said, especially for the community-based
15 alternatives to detention. ICE is systematically
16 under-invested in those programs. But where they
17 exist, you know, they produce very good results.

18 CHAIRMAN CASTRO: Mr. Libal?

19 MR. LIBAL: I would just concur with
20 that. And if you come to Texas, we'll show you some
21 terrific immigrant shelters.

22 CHAIRMAN CASTRO: Okay, great.
23 Commissioner Yaki, you have the floor.

24 COMMISSIONER YAKI: Thank you very much
25 Mr. Chair. Just to follow up on that. There are

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1 some data points that I think would be helpful to
2 the Commission in developing this further.

3 I think about our experience in
4 California and moving away toward incarcerating
5 non-violent offenders and how much the economics of
6 that really worked in terms of persuading people to
7 come onboard from all parts of the political
8 spectrum.

9 I think it's important if we can—if you
10 can help us develop, if you have the ability to do
11 so, quantifying some of the dollars involved here
12 versus in terms of the cost of currently—of
13 incarceration, essentially. I mean, that's what
14 this is, it's incarceration of these individuals
15 versus a cost of administrative parole, of ankle
16 monitor release, and show up rates; in terms of
17 coming to a court hearing.

18 And I was going to say then, looking at
19 that, seeing if—and I imagine the delta on that
20 would be pretty big. And then, sort of within that
21 delta, how much of that could go toward providing
22 represented counsel for these folks in order to—as
23 I said, becoming a fair fight.

24 And I think that, you know again, this
25 is—my basic feeling is that Americans are fair and

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1 they understand when people are fleeing something
2 that's horrible, that they should have a right to a
3 fair hearing. And I think if we can put it in terms
4 of dollars in some ways to do this, I think that
5 would help us make that argument to a broader
6 audience.

7 The other point, the other issue would
8 be whether or not they should be eligible for work
9 permits on release as well. Because it's one thing
10 to say, "Okay, I'm going to be living on parole."
11 It's another thing to say and, you know, figure out
12 what you're going to do. How much would that cost?
13 How much would that benefit a community? Those
14 kinds of things.

15 And I do want to make this one point:
16 Geo and CCA don't use that inmate labor on their
17 own. It is permitted by ICE. I mean let—I mean, I
18 just want to say that. It is permitted by ICE. It's
19 part of their cost reduction, I believe, in terms
20 of how they make these contracts.

21 I wanted to ask, though, a quick—a
22 question. Because I think it—I was trying to fig—
23 you know, I was trying to reconcile what I know
24 about some parts of prisons and what Ms. Hinojosa
25 was saying. And I think a lot of that went toward

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1 the CBP facilities that you were talking about.

2 Can you elaborate on them more, about
3 the ad hoc nature, how they're spread out, and
4 whether or not there are any adequate standards to
5 govern them? And, how we can influence that?

6 MR. TAKEI: Well, first I'll address the
7 facts and figures for the alternatives to
8 detention, depending on what exactly those
9 alternatives consist of, range from \$0.17 per day
10 to \$17.00 per day, per person. Detention, for adult
11 ICE detention is upwards of \$160.00 per person per
12 day. Family detention is between \$250.00 and
13 \$300.00 per person per day.

14 So, you know, if we took the detained
15 population and instead had them on alternative
16 detention while their cases were moving forward,
17 that would be a substantial cost savings.

18 For turning to the CBP and the *ilitas*,
19 we don't know how many *ilitas* there are. It's a
20 system that has been subject to almost no public
21 disclosure. In some cases, ACLU attorneys have been
22 able to visit individual *ilita* sites and see what's
23 in inside.

24 Some other NGOs have been able to do
25 the same thing. But nobody outside of CBP has a

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1 very good sense of even how big the system is.
2 These facilities are generally intended for short-
3 term detention. They're not supposed to be used for
4 over 72 hours.

5 In practice, though, people have ended
6 up being in there for days, weeks. And it's—there's
7 again, very little public disclosure from CBP about
8 even a simple figure like average length of stay.

9 They're called *ilitas* because one of
10 the most consistent complaints about them is that
11 they feel like iceboxes inside for the detainees.
12 The temperatures are kept very cold. And so,
13 especially for people who have just come from a
14 desert crossing, they're wearing you know, shorts,
15 short sleeved shirts.

16 They are then put on what's often a
17 concrete bench inside of a cell. And they become
18 very, very cold. There are horrible stories about
19 siblings who have crossed the desert and then are
20 just hugging each other for warmth because they're
21 so cold inside the *ilita*.

22 COMMISSIONER YAKI: Is there a way that
23 you could give us a list of questions about the
24 *ilitas* that we could send to CBP?

25 MR. TAKEI: Yes.

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1 COMMISSIONER YAKI: Thank you.

2 MS. MCCARTHY: And I just would like to
3 add two other thoughts on that. I think we've all
4 talked about the statistics and numbers. Like you
5 said, I think there's a very powerful economic
6 argument. But I just feel like no one's listening.
7 And I'm not sure if we need a different messenger
8 on that.

9 The Commission might be one of those
10 messengers. But it might also be valuable for the
11 Commission to think of engaging in a university or
12 an academic institution that looks at those
13 economic numbers. Because it's powerful when you
14 think of how much money, taxpayer money, we're
15 throwing away to incarcerate mothers and children
16 when they're not a threat to the community. They're
17 not a flight risk.

18 And then, the second point I wanted to
19 make too about CBP is, I think your question and
20 Carl's answer really reflect the invisibility of
21 the system. And it begins with CBP. And if you
22 don't get in there and if there's no one there
23 monitoring or any oversight, then you don't know
24 how long these children are being detained.

25 You don't know if they're violating the

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1 law. It's only when the children come out and you
2 talk to them that you're like, "Oh my gosh, how
3 many more children have gone through these
4 experiences?"

5 So I think you know, through our work
6 with these children and this complaint we just got,
7 there are so many other people who are getting
8 caught in the system. So I think one of the points
9 or recommendations I would make to the Commission
10 is to ask for data and have that data reported to
11 you and to Congress on a regular basis.

12 CHAIRMAN CASTRO: I don't know if Ms.
13 [Angela] French from OCRE is in the room yet? I
14 know she was here earlier. But let's just make a
15 note that we ask our civil rights analyst. Was she
16 here earlier? Yes, she was. No, okay. To have our
17 civil rights analyst crunch those numbers for us.

18 Commissioner Kladney, followed by
19 Commissioner Achtenberg.

20 COMMISSIONER KLADNEY: Thank you Mr.
21 Chairman. I'd like to get—I tried to get to it
22 earlier, well the first question is, which facility
23 would you visit if you had one facility to go to
24 besides the family facility, because we already
25 heard which one that would be. Do you have a

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1 choice? A preference?

2 MR. TAKEI: One that would be on my list
3 would be Etowah County Jail in Gadsden, Alabama.
4 This is a county jail—

5 COMMISSIONER KLADNEY: How do you spell
6 that?

7 MR. TAKEI: E-T-O-W-A-H. It's a county
8 jail that ICE has contracted with for a number of
9 years. At one point, ICE attempted to cancel the
10 contract to Etowah, and Congressional intervention
11 occurred from the Alabama delegation. The
12 cancellation was withdrawn.

13 And it's a place where one of the
14 detainees that I spoke to when I visited there
15 said, "This is the end of the road. It's where you
16 go to lose hope."

17 COMMISSIONER KLADNEY: Got it.

18 MR. TAKEI: Because there's an extremely
19 large population of long-term detainees there. Many
20 of whom haven't been given bond hearings to
21 determine whether they ought to be detained in the
22 first place.

23 COMMISSIONER KLADNEY: Thank you. Is
24 that?—

25 MS. MCCARTHY: I would also suggest the

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1 facility in Eloy, Arizona. It's a CCA facility. And
2 we've received numerous complaints from that.

3 COMMISSIONER KLADNEY: Is that a sheriff
4 or is that a local jail?

5 MS. McCARTHY: It's operated by the
6 private prison corporation, Correctional
7 Corporations of America, Mr. Conry's company.

8 COMMISSIONER KLADNEY: Okay.

9 MS. McCARTHY: So, I think we've heard a
10 number of issues, particularly with respect to
11 women and sexual—potentially alleged sex there, so.

12 COMMISSIONER KLADNEY: Mr. Libal?

13 MR. LIBAL: By far the most depressing
14 facility I've been in is the Polk County Detention
15 Center in Livingston, which is operated through an
16 Intergovernmental Service Agreement [IGSA]. And I
17 think that's actually an important point as well,
18 that I don't think has been raised.

19 Is that the vast majority of these
20 facilities are operated under Intergovernmental
21 Service Agreements, including the Dilley Family
22 Detention Center is operated under an expansion of
23 an Intergovernmental Service Agreement that ICE
24 already had with Eloy, Arizona.

25 COMMISSIONER KLADNEY: Well I thought

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1 someone said earlier that 60 percent of these were
2 the private prison corporations?

3 MR. LIBAL: At Dilley, they are. So, the
4 way that the contracts flow is that ICE will
5 contract with a local government agency, which then
6 subcontracts with the private prison corporation.
7 In the case of Dilley, ICE didn't want to even go
8 through that process.

9 They subcontract—they expanded an
10 existing agreement that they had with Eloy,
11 Arizona, their very troubled facility, the facility
12 that's had the most deaths of any immigration
13 detention facility since the creation of the
14 Department of Homeland Security. They expanded that
15 Intergovernmental Service Agreement to create the
16 facility in Dilley, Texas, which is 900 miles away.

17 No one from Eloy ever visited the site,
18 even though they're the legal entity that has the
19 contract with ICE and is supposed to be overseeing
20 it.

21 COMMISSIONER KLADNEY: Okay, so
22 basically, the local government's making money, and
23 the contractors are making money.

24 MR. LIBAL: Yes. Half a million dollars
25 a year is what Eloy, Arizona, is making for just

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1 shuffling the paperwork to CCA.

2 COMMISSIONER KLADNEY: Okay. Gee, glad
3 we found that out.

4 MR. LIBAL: And Polk County is a similar
5 agreement. It's a-what-Polk County has the
6 Intergovernmental Service Agreement.

7 COMMISSIONER KLADNEY: Private
8 contractor.

9 MR. LIBAL: Subcontracts it with a
10 company called Community Education Centers, which
11 is not what you might think it is. It is actually a
12 private prison corporation.

13 COMMISSIONER YAKI: It's a shortcut for
14 the RFP process, essentially.

15 MR. LIBAL: Exactly. Shortcut for RFP.
16 It also gets the Federal Government around some
17 environmental and competitive bidding processes.

18 COMMISSIONER KLADNEY: Okay. So, I
19 really want to kind of rush through these because I
20 have some more questions. And I just-

21 COMMISSIONER ACHTENBERG: I have some,
22 too.

23 COMMISSIONER KLADNEY: I know. That's
24 why I'm rushing.

25 MS. McCARTHY: And can I just throw in

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1 one piece of information here? You asked the
2 question about lawsuits. You can imagine when
3 you've just heard how convoluted this contracting
4 goes, the difficulty of identifying a defendant.

5 COMMISSIONER KLADNEY: Right.

6 MS. MCCARTHY: And holding a defendant
7 liable.

8 MR. LIBAL: Well, and not only that,
9 there are two very bad Supreme Court decisions on
10 the books limiting the scope of *Bivens* liability
11 for constitutional violations by private prison
12 employees and private prison companies.

13 COMMISSIONER KLADNEY: Oh, okay. Limited
14 liability right? Okay so, you mentioned solitary
15 confinement. I tried to get back to that earlier
16 today. But I guess I—it was an in artfully asked
17 question, and then I ran out of time.

18 Do they have limits on how off—how long
19 people stay in solitary? Do they require mental
20 health checks? Do they require medical checks? Do
21 they require outside exercise? Do they require
22 human contact?

23 All sorts of prisons treat solitary
24 confinement pretty much differently. Is there some
25 standard and protections for those placed in

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1 segregation?

2 MR. TAKEI: So, this is the 2013 policy
3 directive that I mentioned. Before that directive
4 was adopted, ICE didn't even have a clear idea of
5 how many people were in solitary confinement in
6 their system at any given time.

7 Under the directive, there's supposed
8 to be a very clear reporting chain about, you know,
9 how long people are in solitary confinement. And
10 especially, the longer that somebody stays in
11 solitary confinement, the more that the field
12 office has to report that to headquarters and
13 justify it.

14 So, it's a policy that, if it is being
15 faithfully implemented across the board, should be
16 reducing both the number of people who are in
17 solitary and the length of time that they spend in
18 solitary.

19 COMMISSIONER KLADNEY: What about the
20 care in solitary? I mean, I was asking about that.

21 MR. TAKEI: The directive also has
22 provisions about monitoring of people.
23 Particularly, people who are suffering from serious
24 mental illness or other vulnerabilities that would
25 make solitary confinement especially likely to harm

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1 them in very serious ways.

2 COMMISSIONER KLADNEY: But we don't know
3 if that's really being carried out—

4 MR. TAKEI: Right.

5 COMMISSIONER KLADNEY: Because
6 everything is by ICE, and they don't disclose
7 anything? Is that right?

8 MR. TAKEI: Right.

9 COMMISSIONER KLADNEY: Okay. Now I'm
10 getting close to the end here, and I'm sure the
11 Chairman is very happy about that.

12 Everything we seemed to have talked
13 about, there seems to have been tons of criticism
14 of ICE here today. Private prisons, how they're
15 run, and all that stuff. Can't most of this be
16 corrected by Executive Order?

17 MS. McCARTHY: Well, it's by Executive
18 Order that we've seen an increase of family
19 detention from 100 beds in May 2014 to, what, 2,400
20 now? Yes.

21 COMMISSIONER KLADNEY: Right, right. But
22 I'm not—I'm saying, one, can it be corrected by
23 Executive Order? Two, even if we have contracts for
24 34,000 beds, we don't have to fill them.

25 MS. McCARTHY: Right.

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1 COMMISSIONER KLADNEY: ICE could be told
2 to use alternative forms even if Congress demands
3 that we pay the money to these prison companies. Is
4 that correct? And we could implement—

5 MR. TAKEI: Well, it's simply couldn't
6 do that. There's—

7 COMMISSIONER KLADNEY: Okay.

8 MR. TAKEI: Yes, there's—so, at the top
9 level, DHS has adopted what I would consider an
10 appropriate interpretation of the 34,000 bed quota
11 requirement, which is that they need to maintain
12 those beds, but they don't necessarily need to keep
13 them all filled.

14 COMMISSIONER KLADNEY: Right.

15 MR. TAKEI: And the problem is, it's
16 sort of like if you had a police department where
17 the budget was—said you have all of this money that
18 must be used to maintain a fleet of tanks, and then
19 the money that's left over can be used for cars and
20 motorcycles and that sort of thing. It—you know,
21 all of the money and all of the attention is being
22 sucked toward detention rather than ICE being able
23 to invest in the way it ought to be able to invest
24 in alternatives.

25 COMMISSIONER KLADNEY: I understand

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1 that. So you're saying, there's no money for
2 alternative.

3 MS. McCARTHY: It becomes an
4 appropriations issue in Congress.

5 COMMISSIONER KLADNEY: Okay. And what
6 about these other types of conduct we're talking
7 about that occurs within the facilities? That's not
8 dictated by Congress, right?

9 MS. McCARTHY: No. I think you're
10 absolutely right.

11 COMMISSIONER KLADNEY: That could be all
12 done by fiat, right?

13 MS. McCARTHY: That's administratively.

14 COMMISSIONER KLADNEY: I mean, the way
15 it's—it's a management issue. It's not a political
16 issue.

17 MS. McCARTHY: Right.

18 COMMISSIONER KLADNEY: Unless you make
19 it a political issue.

20 MR. TAKEI: Right. Yes.

21 COMMISSIONER KLADNEY: Thank you.

22 CHAIRMAN CASTRO: Thank you.
23 Commissioner Achtenberg?

24 COMMISSIONER ACHTENBERG: Ms. McCarthy,
25 you said definitively and unequivocally, detention

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1 does not deter migration. Can you tell me how you
2 know that?

3 MS. McCARTHY: From our cases. I mean,
4 we've seen so many cases of individuals. And that
5 was part of this complaint that we filed with the
6 RCL, is that there are individuals who have lapsed,
7 who arrived here and were detained and then were
8 deported back to their home country and came back
9 because they were not safe.

10 And so, we've seen case after case,
11 whether it's because of persecution or wanting to
12 be reunited with their family, it has not solved
13 the problem.

14 COMMISSIONER ACHTENBERG: So, to the
15 extent that there may be some in policy-making
16 position who believe, albeit regrettably
17 presumably, that the fact that these mothers and
18 children are being detained in less than the least
19 restrictive settings, that they could possibly be
20 dealt within, the notion that that is sending a
21 message to prospective immigrants that they might
22 as well stay home, that's not an effective message.
23 Is that your contention?

24 MS. McCARTHY: I don't think people who
25 are fearing for their lives think about what's on

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1 the other end. They flee. And that's what we've
2 seen in Central America currently.

3 In fact, asylum applications have gone
4 up throughout the whole region. So, the situation
5 in Central America, interesting enough, there was a
6 conference call today with the White House where
7 they're asking for more money to help with the
8 situation in Central America because of the
9 violence there.

10 So, detaining mothers and children here
11 in the United States is not getting back to those
12 children in Guatemala or those mothers in Guatemala
13 to say, "I'm not going to make that flight because
14 I'm going to die here or I'm going to be detained
15 there." It's just not a question.

16 COMMISSIONER ACHTENBERG: Have the
17 numbers of people coming across the border, mothers
18 and children, or children unaccompanied, have they
19 declined as of late? Or are they still on the
20 increase?

21 MS. McCARTHY: They have declined. But I
22 think there's a number of reasons for that. And I
23 don't have any studies or, you know—

24 COMMISSIONER ACHTENBERG: Sure.

25 MS. McCARTHY: Concrete research on

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1 this. But one is, I know there's a lot more
2 interdictions in Mexico. So that the children and
3 families who traveled from Guatemala and Honduras
4 and El Salvador have been stopped in Mexico. And
5 there's a lot higher detention and deportation of
6 those individuals in Mexico.

7 Now, it seems that that's shifting a
8 little bit, just from the numbers we've been
9 seeing. Also, I think the other issue is just this
10 time of year. It's more dangerous for people to
11 travel. So, I think what everyone's thinking is,
12 What are we going to see in the spring and summer?

13 So I—maybe detention was a factor, but
14 I don't believe it in talking to people. I—when
15 people are afraid, they're going to leave for their
16 lives.

17 COMMISSIONER ACHTENBERG: My concern is,
18 it is still commonly believed in certain policy
19 circles that this policy is working.

20 MS. MCCARTHY: Right. Right.

21 COMMISSIONER ACHTENBERG: So, I was
22 interested in knowing what facts you have to the
23 contrary?

24 MS. MCCARTHY: Yes, and I think it's
25 just—I think it's the cases that we've seen and the

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1 individual stories that we've secured.

2 COMMISSIONER ACHTENBERG: Thank you.

3 CHAIRMAN CASTRO: This is something that
4 just popped into my mind when you mentioned the
5 interdiction and detention in Mexico. How are folks
6 being detained in Mexico, do you know?

7 MS. McCARTHY: I think it's not in the
8 most ideal of conditions. I think that's a whole
9 other issue. One of my colleagues was in the
10 conference in Mexico exactly about this.

11 And unfortunately, I think the
12 situation's gotten worse in Mexico because they
13 felt the pressure to detain more of these
14 individuals than they have historically.

15 CHAIRMAN CASTRO: Do you know if any of
16 the private prison corporations are down there
17 doing business on this?

18 MS. McCARTHY: That's an interesting
19 question. I have not heard anything.

20 MR. LIBAL: The big ones aren't. There
21 is some talk about privatization of prisons and
22 jails in Mexico. But CCA and Geo have not branched
23 out there yet.

24 CHAIRMAN CASTRO: Do we have any more
25 questions from our Commissioners? Commissioner

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1 Heriot?

2 COMMISSIONER HERIOT: Isn't there an
3 alternative theory here, and that would be that the
4 detention policy actually works like a charm in the
5 sense that it doesn't deter the people who we don't
6 want to deter because they really are in danger.
7 But it does deter the people who would be making a
8 claim that they are in danger, but in fact are not?

9 MR. TAKEI: That rests on the assumption
10 that there are large numbers of people who are
11 coming from these three Central American countries
12 with false asylum claims. And I haven't seen
13 anything that would substantiate that.

14 COMMISSIONER HERIOT: Yes, but that's
15 because the—that's what I'm saying, the alternative
16 theory. I'm not saying that it's true. I don't have
17 any evidence in any particular way. But the point
18 is that, to say that this isn't deterring forgets
19 that there are other populations that may be
20 deterred.

21 MS. McCARTHY: I mean, it's—the reason
22 I'm hesitating on that is that it is just such a
23 dangerous, dangerous journey. And, you know,
24 mothers and children have died on that journey. And
25 they risk their lives making that journey.

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1 (Telephonic interference)

2 (Laughter)

3 CHAIRMAN CASTRO: DHS must have just cut
4 the line.

5 (Laughter)

6 CHAIRMAN CASTRO: Commissioner Kirsanow,
7 are you still on the line?

8 COMMISSIONER KIRSANOW: I am.

9 CHAIRMAN CASTRO: Okay. Let's continue.
10 Were you done with your answer?

11 MS. MCCARTHY: Yes, I was.

12 CHAIRMAN CASTRO: Okay. Did that answer
13 your question?

14 COMMISSIONER HERIOT: In a sense, yes.

15 CHAIRMAN CASTRO: In a sense, okay.
16 Anybody else? Commissioner Kirsanow, did you have
17 something that you wanted to say? You've been
18 unusually quiet.

19 COMMISSIONER KIRSANOW: I just wanted
20 deference to Commissioner Yaki.

21 (Laughter)

22 CHAIRMAN CASTRO: Thank you, I
23 appreciate that. So, what I'd like to do just to
24 wrap this up is, I would ask each of you to very
25 briefly comment on anything that relates to this

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1 issue that maybe we didn't ask you about that you
2 think would be important for us to know about as we
3 prepare to make our report to the President and
4 Congress.

5 COMMISSIONER KLADNEY: Mr. Chairman.

6 CHAIRMAN CASTRO: Yes?

7 COMMISSIONER KLADNEY: If they too
8 could, I don't know if I asked this, if you could
9 submit your thoughts on a statement of rights that--

10 CHAIRMAN CASTRO: Yes, I think you did
11 ask it. Well I know you asked it before, yes.

12 COMMISSIONER KLADNEY: Yes, I asked it
13 before. Thank you.

14 CHAIRMAN CASTRO: You're welcome. So, do
15 you want to start Mr. Takei?

16 MR. TAKEI: Well, let's see. So there
17 are--there were a couple of things that I just--that
18 came up in some earlier panels that I wanted to
19 briefly note.

20 There was a question that Commissioner
21 Yaki had asked about the training and access to
22 records in Federal versus private prison
23 facilities. And there is actually a quite serious
24 problem with the FOIA loophole for private prisons.
25 That you know, if a facility is run directly by

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1 ICE, then it's subject to FOIA.

2 If it is run by a private prison
3 company, it's not subject to FOIA except to the
4 extent that the records relating to the facility
5 are in ICE's actual possession.

6 CHAIRMAN CASTRO: Okay.

7 MR. TAKEI: And that, combined with
8 *Malesko* and *Pollard*, are the two Supreme Court
9 cases, Commissioner Kladney, if you're interested
10 in following up on that, that make it essentially
11 impossible to subject a private prison company or a
12 private prison employee to *Bivens* constitutional
13 liability.

14 COMMISSIONER KLADNEY: What was the name
15 of that case?

16 MR. TAKEI: *Malesko*. M-A-L-E-S-K-O.

17 CHAIRMAN CASTRO: And Mr. Libal, do you
18 have anything?

19 MR. LIBAL: Well, I think a theme that I
20 heard running through the panel was that one of the
21 major, this panel and the other panels, was that
22 one of the major—one of the major problems with the
23 civil detention system is simply its scope.

24 And so I think that it—perhaps it
25 would—and I think that we all sort of said that and

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1 then said—and we should really reduce the scope of
2 the detention system. So, I think that maybe one of
3 the things that we should do is go back and
4 actually draw up one of those lists of the ways
5 that the detention system should be reduced,
6 reduced quickly, and reduced now.

7 I think that that's something that has
8 me thinking. I also noted, right, that Sister Norma
9 mentioned that Catholic Charities and other faith
10 organizations are there to step right up, and that
11 they want to be involved.

12 They want to step up to provide the
13 kind of relief that they were providing at the
14 border this summer. I was down at Sacred Heart in
15 McAllen where the—I mean it's a truly inspirational
16 and amazing operation that they have going there.

17 So, I think that there are a lot of
18 resources around—a lot of resources that the faith
19 community and other organizations would love to
20 provide to providing alternative, true community-
21 based alternatives to detention that could really
22 reduce the number of people in detention and
23 eliminate family detention all together.

24 MS. McCARTHY: And I would just echo
25 that. I would strongly urge the Commission to think

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1 about encouraging the Government to revisit this
2 detention paradigm. It really should be used as a
3 last resort. And when we have workable alternatives
4 to detention, it can be used as a last resort.

5 When it can't be used as a last resort
6 and there are risks, flight risks or dangers--
7 individuals who are dangerous to the community,
8 then let's make sure those individuals are placed
9 in the appropriate facilities. And to that end I
10 would really encourage you to encourage the
11 Government to ensure that the detention standards
12 are applied to all facilities, all jails that are
13 being used to hold non-citizens.

14 CHAIRMAN CASTRO: Well, thank you. That
15 concludes our panel and our program. I just wanted
16 to thank all the panelists that appeared today for
17 your really informative presentations. It will be
18 very helpful to us in our report.

19 I also want to thank and echo
20 statements made earlier thanking our Commission
21 staff for all the efforts they put into organizing
22 today's briefing. It was not easy. It was done
23 quickly, and it was done very well. So, we thank
24 you for that.

25 And then, just to remind the public

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1 that are listening, watching, or in the room here
2 that this case--this hearing will be open, the file
3 will be open for the next 30 days. If there are
4 additional materials that folks would like to send
5 in or public comments they'd like to provide, they
6 can do so one of two ways.

7 They can either mail them into the
8 Commission, care of our Office of Civil Rights
9 Evaluation, 1331 Pennsylvania Avenue, NW, Suite
10 1150, here in Washington, DC 20425. Or via email at
11 publiccomments@USCCR.gov.

12 It is now 3:21--I'--

13 MS. SALLO: May I change that? Please
14 submit your public comments to detention@USCCR.gov.

15 CHAIRMAN CASTRO: Okay.

16 Detention@USCCR.gov. It is now 3:22,
17 and the Commission on Civil Rights is hereby
18 adjourned. Thank you.

19 (Whereupon, the above-entitled matter
20 went off the record at 3:22 P.M.)

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