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

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

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

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

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

25 Again, I would like to thank all three

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1 witnesses for appearing today to present their
2 testimony, and we'll proceed with Mr. Medina.

3 MR. SERGIO MEDINA: Thank you for the
4 introduction, and since you introduce so well, I
5 will skip saying who I am.

6 CHAIRMAN WALTON: I'm sorry. See, somebody
7 always swears my witnesses for me in court, and I
8 slip sometimes.

9 Could you stand, please, and take the oath.

10 Do each of you solemnly swear or affirm
11 that the testimony you will provide to this
12 Commission at this time will be the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 MR. SERGIO MEDINA: I do.

15 MR. CHRISTOPHER NUGENT: I do.

16 MS. REBEKAH TOSADO: I do.

17 CHAIRMAN WALTON: Thank you.

18 And thank you.

19 MR. SERGIO MEDINA: So I think we should
20 start with defining what an unaccompanied alien
21 child is. It's sort of a harsh term, but it really
22 refers to a child who, one, has no lawful
23 immigration status in the U.S., has not attained the
24 age of 18 years, and with respect to whom there's no
25 parent or legal guardian in the United States or no

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1 parent or legal guardian in the U.S. that is
2 available to provide care or physical custody.

3 The ORR program for unaccompanied children
4 was created in 2002 when the Homeland Security Act
5 transferred responsibility of these children from
6 the former INS to Office of Refugee Resettlement,
7 which is ORR, which is a department within Health
8 and Human Services.

9 As a result of the act, the approach to
10 custody of these children was shifted from
11 enforcement only to one based on child welfare
12 principles.

13 Before going further, though, into sort of
14 the setup of the program and who these children are,
15 I think it's important to make the distinction about
16 these children in light of the issues being
17 researched by the Commission.

18 Most unaccompanied children do not fit
19 easily into the category of persons that's the focus
20 of this study of the Commission.

21 From my perspective, they are not prisoners
22 or inmates. It would not be good to refer to most
23 of these children as "detainees" as that word
24 conjures up images of shackles and bars and
25 jumpsuits, which was common when the program was

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1 operated under the former INS.

2 Thankfully, for a vast majority of these
3 children in ORR care today, this is far from their
4 experience. For example, over 30 percent of the
5 children were treated as prisoners previously under
6 INS. Now, only 3 percent of kids in the ORR program
7 are in such lockdown facilities. The rest are in
8 what we call basic shelter, and it's a shelter for
9 children. The children have a lot of freedom of
10 movement. They play. They go to school while
11 they're there at the shelter. It's a very child
12 friendly environment.

13 So, again, while they don't fit into the
14 category that we sort of see as -- or consider what
15 are inmates, I would like to share a few points
16 about some of the obstacles these kids face and some
17 of the positive developments I believe that make
18 them less vulnerable to abuse.

19 The children with whom I work are
20 vulnerable on a number of different levels.

21 Some of these children are victims of human
22 trafficking, brought to the U.S. for sexual
23 exploitation or forced labor.

24 Other children are smuggled into the U.S.
25 on thousand-mile journeys, at each stop of the way

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1 at incredibly high risk for abuse and sexual
2 exploitation.

3 Once in the U.S., a smuggler or trafficker
4 may use what's called a "drop house" to hold the
5 child and other individuals until they think it's
6 safe to continue the rest of their journey.

7 The conditions in the drop houses are known
8 to be deplorable with overcrowding, intimidation,
9 and abuse -- direct abuse, physical and sexual.

10 When the Department of Homeland Security
11 conducts a raid on a drop house, children there
12 remain vulnerable. They may be lumped in with the
13 smugglers or the traffickers and may not be given
14 the chance to identify themselves as victims and ask
15 for protection from Homeland Security.

16 From children who were caught at the
17 border, I've heard that being apprehended by U.S.
18 Border Patrol brings mixed emotions. Sometimes it
19 signifies the end of a very long and often
20 terrifying journey.

21 At the same time, you know, they're
22 terrified, they're anxious, they're fearful about
23 what's going to happen to them in the future and
24 what this all means.

25 The stations that they're processed out,

1 they're not designed to be centers of child care,
2 and, you know, we give that weight. But there are
3 ways that treatment of children at the Border Patrol
4 stations can be improved by sensitizing the agents
5 to what these kids have gone through and why they're
6 coming here and now that they're there, how they can
7 be -- can be treated in a more humane way.

8 When the children arrive in an ORR shelter,
9 usually the basic shelter model is used for, you
10 know, over 90 percent of the kids that are placed
11 with ORR. They're often unclear as to the role the
12 shelters play. And they arrive feeling skeptical,
13 fearful, and mistrusting. It can take several days
14 for these kids to realize that he or she is safe at
15 the shelter.

16 During their time at an ORR shelter, a
17 child receives several medical and psychosocial
18 assessments. And these are required on a staggered
19 time basis, with an immediate evaluation, a 24-hour
20 evaluation, one at 72 hours, and then follow-up
21 services thereafter.

22 And these tools are designed to give the
23 providers a window into the overall functioning of
24 this child to screen for child abuse, which would
25 include any sexual abuse, had it happened before

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1 that child is placed there.

2 And it's also used to give the providers a
3 first step in figuring out what sort of service this
4 child may need.

5 Any indication that child abuse has
6 occurred starts a chain reaction with referring the
7 child for a medical evaluation, filing a child abuse
8 report, and providing mental health trauma support.

9 And I should note here that each shelter
10 that operates within ORR, they're governed -- they
11 have to be licensed in the state in which they
12 operate.

13 So a lot of the requirements that the
14 shelter has to do in terms of reporting and
15 different mechanisms for that are governed by the
16 state laws within that state. So they can vary from
17 state to state. But California, for one, is one of
18 the more strict and stringent states in the U.S.

19 So any child in ORR care will come across
20 several mandated reporters on any given day. And
21 the mandated reporters are teachers, social workers,
22 childcare workers who, if they see child abuse and
23 they know about child abuse or they have reason to
24 believe or suspicion that abuse has occurred,
25 they're required to -- by the state to file a report

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1 and to take follow-up action.

2 And so on any given day, you know, the
3 child will see many, many different mandated
4 reporters who could at any time make a child abuse
5 report on the kid's behalf.

6 Field coordinators, which I'm one of, meet
7 individually with children, the local shelter,
8 mental health service providers, legal service
9 providers and a host of other individuals involved
10 in care of unaccompanied children.

11 The field coordinators provide evaluations
12 and assessments in order to make recommendations to
13 ORR on placement and release decisions based on the
14 best interests of the child.

15 And I think here it's important to note
16 that a large majority of these children do get
17 released from the ORR shelters. I think it's
18 upwards of 60 percent. And they get released to
19 family members here in the United States.

20 There's a very strong order of preference
21 of family members that we -- "we" meaning the
22 shelter, myself, and ORR -- like to release children
23 to. At the top of the list, mother and father, and
24 then it goes down in degrees of distance and
25 relatives from the child.

1 Maintaining the rights of abused children
2 must occur on many levels, though, beyond the local
3 shelter. ORR has made many strides in policy
4 changes and new care models. Nevertheless, ORR
5 needs to continue to expand its use of smaller care
6 arrangements and eliminate its dependence on large
7 institutional settings, even among current
8 providers.

9 The larger a children's facility, the more
10 institutional it becomes. And no matter how sound
11 the services are or how caring the staff at some of
12 the larger shelters, this concept is supported by
13 standards of child welfare practice.

14 Finally, one of the biggest remaining
15 obstacles to protection is the lack of access to
16 full legal representation or legal remedies for
17 these children. Again, like the adult detainees,
18 these children are in removal proceedings. They
19 have to appear before an immigration judge and fight
20 their case and say, you know, I have a right to stay
21 in the U.S. And if not, they have to be removed.

22 And so while efforts are made to improve
23 individual assessment and incorporate child
24 advocates -- which the child advocate model is one
25 that's used in the child protective system in any

1 state system. So a guardian ad litem would be
2 appointed to a case for a child that's been abused.
3 In the system for immigrant children, that's not the
4 case.

5 For the nonprofits that represent these
6 kids, understaffed and overburdened nonprofit legal
7 projects struggle to provide basic legal orientation
8 and screen these children for possible immigration
9 relief.

10 There are a couple of other types of legal
11 protections, for example, the U-Visa and the T-Visa,
12 that are offered. T-Visa for victims of
13 trafficking, which could include children who have
14 been sexually abused.

15 The U-visa reserved for children who have
16 been other -- victims of other types of crimes.
17 Both of those legal protections are not easy systems
18 to access for children, especially if they have no
19 attorney.

20 And one of the biggest things that I really
21 wanted to mention to the Commission today is the
22 process of special immigrant juvenile status.

23 Now, that's a visa that's reserved for
24 children who have been abused, abandoned, or
25 neglected.

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1 Now, in the state system, if a child -- if
2 a local kid has been abused, abandoned, or
3 neglected, he or she can go into the local courts
4 and ask that a judge make a finding of dependency.

5 Now, if the judge does this, they could
6 declare that this child is a ward of the state.

7 Now, for immigrant children, this visa sort
8 of is the overlap between that protection and these
9 immigrant children.

10 And now, if a child is in an ORR facility,
11 in order for them to access this visa, they have to
12 request consent from the Department of Homeland
13 Security, Office of Juvenile Affairs.

14 Now, a diligent attorney can prepare a
15 summary and say, this is why I find that this child
16 meets the criteria for this visa and also that it's
17 likely that they will be deemed abused, abandoned,
18 or neglected.

19 So that petition will go to one person in
20 an office of Homeland Security, and that person
21 reviews this petition and can say whether or not he
22 will allow this child to go forward with that
23 application or not.

24 And that -- that process -- that person,
25 not having any child welfare background, reviewing

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1 very sensitive children's issues, cases, making a
2 decision on whether or not this child can go forward
3 with this case I think is a severe, severe conflict
4 of interest.

5 And it really hurts child protection in
6 this area. It's probably one of the biggest things
7 that I see as hindering -- you know, any child who
8 had been abused on any point from the time they left
9 their journey, all the way up until being at the
10 shelter, that's a legal protection for them that is
11 often a very difficult thing for them to access.

12 So as you can see, the situation of these
13 kids is indeed unique. I mean, they don't -- again,
14 don't fit into sort of the classic idea of what's a
15 detainee.

16 So I would like to thank you for the
17 opportunity to be here and to speak about these
18 children's cases.

19 CHAIRMAN WALTON: Thank you very much.
20 That was very helpful.

21 Mr. Nugent?

22 MR. CHRISTOPHER NUGENT: Thank you, your
23 Honor. It's a privilege and honor to speak before
24 this Commission. I really thank you for caring
25 about including concerns for the vulnerable