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1 CHAIRMAN WALTON: Thank you very much.

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

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

14 MR. ASA HUTCHINSON: Yes, we did.

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

17 So it's good to see you again.

18 If you would please stand and take the
19 oath.

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

24 MR. ASA HUTCHINSON: I do.

25 CHAIRMAN WALTON: Thank you.

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

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

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

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

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

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

24 I believe the way that we care and treat
25 people who are in the care of the Government is one

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1 of the ways that the values of society will be
2 judged.

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

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

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

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

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

25 In addition, the Department of Corrections

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1 has taken the initiative for increased training,
2 education of inmates and family members and, very
3 importantly, they have identified inmates with
4 previous reporting violations of sexual assault and
5 removed them from the general population.

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

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

12 And so I applaud those very concrete
13 results.

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

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

23 As part of this reorganization, the former
24 INS, that everyone historically has been familiar
25 with, was very clearly abolished. And we were to

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1 take the parts of INS, transfer to the new
2 department, and to reorganize those immigration and
3 enforcement responsibilities.

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

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

13 Every year the department arrests over
14 1.6 million aliens. And the responsibility for
15 alien apprehension is shared between a number of
16 different agencies within Homeland Security: One is
17 the Border Patrol that obviously makes the
18 apprehension between the ports of entry.

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

23 And then you have your ICE agents in the
24 interior of the country that are also making
25 apprehensions on both a targeted basis and in

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1 responding to law enforcement concerns.

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

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

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

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

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

21 And as I mentioned, ICE agents, in
22 addition, do enforcement actions. In fact, if you
23 pick up "USA Today," you will see where there was an
24 ICE raid of multiple facilities across the country
25 in which aliens were apprehended in processing

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1 plants.

2 And this occurred in my state of Arkansas.

3 And you see the typical circumstance that they have
4 been working in the plant many times for five years.
5 They have documents, even though they might have
6 been forged.

7 And they are being separated from their
8 family, and they might be lying about the fact that
9 they -- they say they do not have family when they,
10 in fact, have children, because they don't want
11 their children apprehended and deported from the
12 country.

13 So it's a very difficult circumstance in
14 which the enforcement agents are making these
15 apprehensions.

16 Once they are apprehended, then a multitude
17 of things can happen depending upon the
18 circumstances.

19 Under our law, some aliens, including those
20 with criminal histories or those placed in expedited
21 removal, are classified as mandatory detainees and
22 are detained upon apprehension.

23 The other segment of the alien population
24 are nonmandatory detainees, and they may or may not
25 be detained pending their removal proceedings to

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1 their home country.

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

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

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

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

22 The result of these various scenarios is
23 that in recent years there have been more than
24 23,000 detainees in detention at a given time.

25 And over the last few years, detention

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1 removal has processed over 200,000 aliens annually
2 through its detention system. Of the aliens
3 detained, it's estimated that 10 to 13 percent are
4 asylum seekers.

5 And if you can look at immigration cases,
6 they're different from what you have been hearing in
7 your testimony in previous hearings because these
8 are not normal criminal cases.

9 Immigrant aliens may be in family units.
10 And all of them are being held on civil
11 administrative violations in contrast to criminal
12 violations.

13 The majority of the aliens detained do not
14 have criminal histories. Immigration officials must
15 deal with language barriers, family units, special
16 dietary issues, unaccompanied children, and the need
17 to segregate violent criminal populations from
18 noncriminal aliens.

19 In some instances, the criminal history,
20 particularly the offenses committed overseas, is not
21 known.

22 The criminal history may range from drug
23 dealing to crimes against children and crimes of
24 violence. This very background presents unique
25 challenges to detention officials in making sure

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1 that abuse does not occur and that family units are
2 kept intact.

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

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

10 But a good illustration as to how this
11 worked, an immigrant came into our country in 1996
12 in a legal fashion with a visa, came from Nigeria.

13 They came to this country, this individual,
14 committed a crime, and overstayed their visa. Well,
15 they decided to flee our system of justice and went
16 back to their home country.

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

22 The difference was that we had our US-VISIT
23 Program, and as the inspector checked their
24 passport, nothing came up because it was a false
25 identity.

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1 And then the question was asked, ma'am,
2 would you mind giving us your fingerprints?

3 They scanned the two index fingers, and
4 within 8 seconds a hit came up on the inspector's
5 screen that identified that alien with the crime
6 that was committed. And obviously that individual
7 was processed in a different way.

8 And now that same processing capability is
9 available at our borders. And now the Border Patrol
10 as they apprehend an alien, each one of them will be
11 fingerprinted and the fingerprints will be run
12 through our criminal databases.

13 And so it's easier to detect a criminal
14 alien from someone who is simply coming into our
15 country for economic reasons.

16 The accuracy of information in the
17 databases are essential.

18 And the continued integration of our
19 databases between immigration officials and the FBI
20 is essential to know the criminal history as these
21 individuals are processed.

22 A great deal has been accomplished through
23 the use of technology.

24 Let me make some observations and some
25 hopeful recommendations for your consideration.

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1 It is important for me as Undersecretary to
2 visit facilities. And as I did, I believe that
3 Homeland Security officials were dedicated to
4 providing proper care.

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

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

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

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

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

24 In addition, I believe that those --
25 tracking system is important to be reviewed by the

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1 Inspector General, by the Office of Civil Rights
2 within the Department of Homeland Security, and to
3 outside groups as well to the extent permissible
4 with privacy protections.

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

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

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

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

24 That has historically been a problem. The
25 Department of Homeland Security wants to move that

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1 direction, but it needs to be a focal and a
2 requirement that they have facilities that can house
3 family units together so they're not separated. And
4 I believe that that will be a safer environment.

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

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

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

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

24 There are safety and standards that are set
25 into place. You should consider putting that into

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1 regulatory form and giving more weight to those
2 standards and a greater capability in tracking.

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

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

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

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

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

25 MR. ASA HUTCHINSON: There is only a